

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
FRANCIS M. GREGOREK (144785)
gregorek@whafh.com
BETSY C. MANIFOLD (182450)
manifold@whafh.com
RACHELE R. RICKERT (190634)
rickert@whafh.com
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
JANINE L. POLLACK
pollack@whafh.com
DEMET BASAR
basar@whafh.com
KATE M. MCGUIRE
mcguire@whafh.com
270 Madison Avenue
New York, New York 10016
Telephone: 212/545-4600
Facsimile: 212/545-4653

WESTERMAN LAW CORP
JEFF S. WESTERMAN (94559)
jwesterman@jswlegal.com
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: 310/698-7880
Facsimile: 310/775-9777

LEVI & KORSINSKY LLP
EDUARD KORSINSKY (*pro hac vice*)
ek@zlk.com
SHANNON L. HOPKINS (*pro hac vice*)
shopkins@zlk.com
NANCY A. KULESA (*pro hac vice*)
nkulesa@zlk.com
STEPHANIE BARTONE (*pro hac vice*)
sbartone@zlk.com
30 Broad Street, 24th Floor
New York, NY 10004
Telephone: 212/363-7500
Facsimile: 866/367-6510

Interim Co-Lead Counsel
[Additional Counsel Appear on Signature Page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

IN RE NJOY, INC. CONSUMER
CLASS ACTION LITIGATION

) Case No. CV 14-00428-MMM (RZx)
)
) **FOURTH CONSOLIDATED**
) **AMENDED COMPLAINT FOR**
) **VIOLATIONS OF: (1) CAL.**
) **CONSUMERS LEGAL**
) **REMEDIES ACT; (2) CAL.**
) **UNFAIR COMPETITION LAW;**
) **AND (3) FLORIDA DECEPTIVE**
) **AND UNFAIR TRADE**
) **PRACTICES ACT**
)

Class Action

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

	Page
JURISDICTION AND VENUE.....	1
NATURE OF THE ACTION	3
PARTIES	5
FACTUAL ALLEGATIONS	7
I. ELECTRONIC CIGARETTES.....	7
II. PUBLISHED STUDIES DEMONSTRATE THE DANGERS AND EXPOSURE TO HEALTH RISKS OF E-CIGARETTES	10
III. DEFENDANT'S ADVERTISEMENTS FOR ITS NJOY E- CIGARETTES ARE MATERIALLY DECEPTIVE, FALSE, AND MISLEADING	21
IV. DEFENDANT'S UNIFORM AND PERVASIVE ADVERTISING CAMPAIGN DURING THE CLASS PERIOD WAS MATERIALLY DECEPTIVE, FALSE AND MISLEADING	26
A. Materially Misleading Omissions on NJOY Packages	27
B. Defendant's Other Advertising Was Similarly Materially False and Misleading	30
V. EACH NAMED PLAINTIFF SAW AND RELIED ON DEFENDANT'S CORE MARKETING MESSAGE, INCLUDING SPECIFIC ADS AND PACKAGING	48
CLASS DEFINITION AND ALLEGATIONS.....	50
COUNT I: Injunctive Relief and Damages for Violation of the C.L.R.A. (Cal. Civ. Code §§ 1750 et seq.)	54
COUNT II: Injunctive and Equitable Relief for Violations of the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.)	58
COUNT III: Injunctive Relief and Damages for Breach of Deceptive and Unfair Trade Practices Act (Fla. State § 501.201, et seq.)	60
PRAYER FOR RELIEF	62
DEMAND FOR JURY TRIAL	65

1 Plaintiffs Ben Z. Halberstam (“Plaintiff Halberstam” or “California Plaintiff”),
 2 and Kathryn Thomas (“Plaintiff Thomas” or “Florida Plaintiff”) (collectively, with
 3 the California Plaintiff, “Plaintiffs”), by and through their undersigned attorneys,
 4 bring this action on behalf of themselves and all others similarly situated, based upon
 5 personal knowledge as to themselves and their activities, and on information and
 6 belief as to all other matters, against defendants NJOY, Inc. and Sottera, Inc.
 7 (collectively, “NJOY”¹ or “Defendant”), and allege as follows:

8 **JURISDICTION AND VENUE**

9 1. Diversity subject matter jurisdiction exists over this class action pursuant to
 10 the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005),
 11 amending 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction
 12 over class actions involving: (a) 100 or more members in the proposed class; (b)
 13 where at least some members of the proposed class have different citizenship from
 14 some defendants; and (c) where the claims of the proposed class members exceed the
 15 sum or value of five million dollars (\$5,000,000) in the aggregate.
 16 28 U.S.C. §§ 1332(d)(2) and (6).

17 2. While the exact number of members in the proposed classes is unknown at
 18 this time, Plaintiffs have reason to believe that thousands of consumers purchased
 19 Defendant’s electronic cigarettes (or “e-cigarettes”) throughout California and Florida
 20 during the class period.²

21 3. Diversity of citizenship exists between Plaintiffs and Defendant. Plaintiff
 22 Halberstam is a citizen of California and resides in Los Angeles, California. Plaintiff
 23

24 ¹ Sottera, Inc. was formerly the parent company of NJOY, Inc. and was wholly merged
 25 into NJOY, Inc. in July 2012.

26 ² As set forth in ¶ 114, the class period for the California Class is from January 17,
 27 2010 until the date of notice. As set forth in ¶ 115, the class period for the Florida
 28 Class is July 9, 2010 until the date of notice. Unless stated otherwise, the two class
 periods are collectively referenced as the “Class Period.”

1 Thomas is a citizen of Florida and resides in Jacksonville, Florida. NJOY is
2 incorporated in Delaware with its corporate headquarters located at 15211 North
3 Kierland Boulevard, Suite 200, Scottsdale, Arizona 85254. Sottera was formerly
4 incorporated in the state of Nevada and was headquartered at 15211 North Kierland
5 Boulevard, Suite 200, Scottsdale, Arizona 85254. Therefore, diversity of citizenship
6 exists.

7 4. While the exact damages to Plaintiffs and the Classes are unknown at this
8 time, Plaintiffs reasonably believe that their claims exceed five million dollars
9 (\$5,000,000) in the aggregate.

10 5. Jurisdiction over the Florida Plaintiff is proper pursuant to Section 28
11 U.S.C. § 1367, which provides, in relevant part, that: (a) “in any action of which the
12 district courts have original jurisdiction, the district courts shall have supplemental
13 jurisdiction over all other claims that are so related to claims in the action within such
14 original jurisdiction that they form part of the same case or controversy under Article
15 III of the United States Constitution ... includ[ing] claims that involve the joinder ...
16 of additional parties.”

17 6. This Court has personal jurisdiction over Defendant because Defendant has
18 purposefully availed itself of the privilege of conducting business in the State of
19 California.

20 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many
21 of the acts and transactions giving rise to this action occurred in this District and
22 because Defendant:

- 23 a. has intentionally availed itself of the laws and markets within this
24 District through the promotion, marketing, distribution and sale of its
25 products in this District;
- 26 b. does substantial business in this District; and
- 27 c. is subject to personal jurisdiction in this District;

1 and because Plaintiff Halberstam:

- 2 a. was exposed to Defendant's misleading practices and representations in
- 3 this District; and
- 4 b. purchased NJOY E-Cigarettes (defined below) in this District.

5 8. Venue is proper in this Court as to the Florida Plaintiff and claim under the
6 doctrine of pendent venue.

7 **NATURE OF THE ACTION**

8 9. Defendant, the manufacturer of the NJOY brand of electronic cigarettes,
9 has a uniform and long-standing pattern of employing unfair and deceptive practices
10 with respect to the sale of its products through misrepresentations and omissions
11 concerning the potential health risks thereof. During the relevant period, NJOY
12 manufactured and sold, among others, NJOY, NPRO, OneJoy and NJOY Kings.
13 These are collectively referenced herein as "NJOY E-Cigarettes."³

14 10. Beginning in 2007, and continuing during the Class Period, Defendant
15 has engaged in a consistent and pervasive marketing campaign that promotes its core
16 marketing message that NJOY E-Cigarettes are known to be safer than traditional
17 tobacco cigarettes or generally safe. For example, one of NJOY's marketing taglines
18 has been that its NJOY E-Cigarettes provide "everything you like about smoking
19 without the things you don't," and variations of that statement, which have appeared
20 in numerous print and other advertisements for NJOY E-Cigarettes. NJOY has also
21 used marketing slogans such as that NJOY is the "Resolution Solution;" that "Friends
22 Don't Let Friends Smoke;" and, in the pre-Class Period, that NJOY provides "All the
23 Pleasures of Smoking Without All the Problems." The core marketing message about
24 the purported safety of NJOY E-Cigarettes that is conveyed by these slogans is
25 deceptive, false and misleading because it is not true that NJOY E-Cigarettes are

26
27 ³ NJOY E-Cigarettes that are rechargeable may be purchased with paraphernalia
28 such as chargers, replacement batteries and cartridges.

1 known to be generally safe or safer than traditional cigarettes, which are known to be
2 dangerous. Studies have shown that electronic cigarettes, including NJOY E-
3 Cigarettes, also contain disease-causing substances that are dangerous to your health.
4 Studies also show that certain electronic cigarettes, including NJOY E-Cigarettes,
5 require that the user take deeper puffs to produce vapor than the puffs required for a
6 traditional tobacco cigarette, and that this could be harmful to users' health.
7 Furthermore, there is widespread agreement in the scientific community that further
8 research is necessary before the full negative effects of electronic cigarette use on
9 users' health can be known. Despite Defendant's marketing slogans, Defendant fails
10 to disclose not only what it knew or should have known about the contents of its own
11 products, but that numerous studies have shown that electronic cigarettes, including
12 NJOY E-Cigarettes, contain carcinogens, toxins and other impurities (including some
13 of those also found in tobacco cigarettes) that do carry the risk of and cause disease.
14 Similarly, the packages in which NJOY E-Cigarettes have been sold during the Class
15 Period have omitted both the products' ingredients, and, despite stating other potential
16 dangers of the products regarding nicotine, information about health risks associated
17 with the products.

18 11. Defendant has employed numerous methods to convey to consumers
19 throughout the United States, including California and Florida, its deceptive, false and
20 misleading message about its E-Cigarettes, including its packaging, product inserts,
21 print advertisements, television and radio advertisements, as well as its website
22 through which it sells its product directly to the public. [http://www.njoy.com/njoy-](http://www.njoy.com/njoy-kings/njoy-king-3-pack.html)
23 [kings/njoy-king-3-pack.html](http://www.njoy.com/njoy-kings/njoy-king-3-pack.html) (as visited Jan. 7, 2014). As detailed in ¶¶ 108-111
24 below, Plaintiffs saw and relied on Defendant's false and misleading core marketing
25 message by seeing specific ads and/or packaging, during the Class Period.

26 12. As a result of Defendant's deceptive, false and misleading claims in its
27 advertising and marketing, consumers – including Plaintiffs and the other members
28

1 of the proposed Classes – have purchased NJOY E-Cigarettes without being advised
 2 that they contain a variety of carcinogens, toxins, impurities, and related potential
 3 health hazards as found by various studies discussed in more detail below. Had
 4 Defendant disclosed these material facts, Plaintiffs would not have purchased
 5 Defendant’s NJOY E-Cigarettes. Defendant was able to charge more than what its
 6 NJOY E-Cigarettes would have been worth had it disclosed the truth about them.

7 13. Plaintiffs bring this lawsuit against Defendant, on behalf of themselves
 8 and the proposed Classes, in order to: (a) halt the dissemination of Defendant’s
 9 deceptive advertising messages; (b) correct the false and misleading perception
 10 Defendant has created in the minds of consumers through its misrepresentations and
 11 omissions; and (c) secure redress for consumers who have purchased one or more
 12 NJOY E-Cigarettes. The California Plaintiff, on behalf of himself and the proposed
 13 California Class, alleges violations of the Consumers Legal Remedies Act, California
 14 Civil Code §§ 1750, *et seq.* (“CLRA”) and the California Business & Professions
 15 Code §§ 17200, *et seq.* (“UCL”). The Florida Plaintiff, on behalf of herself and the
 16 proposed Florida Class, alleges violations of the Florida Deceptive and Unfair Trade
 17 Practices Act, Florida Statute §501.201, *et seq.* (“FDUTPA”).

18 **PARTIES**

19 ***Plaintiffs***

20 14. Plaintiff Halberstam is an individual who resides in Los Angeles,
 21 California and is a citizen of California.

22 15. Plaintiff Thomas is an individual who resides in Jacksonville, Florida
 23 and is a citizen of Florida.

24 16. During the respective Class Periods, Plaintiffs, while in the states of
 25 California and Florida, were exposed to, saw and relied on Defendant’s material,
 26 deceptive marketing claims and/or packaging, as specified in ¶¶ 108-111 below. As
 27 a result of that misleading marketing and packaging and Defendant’s omissions,
 28

1 Plaintiffs believed that NJOY's products did not carry dangers or risks like traditional
2 cigarettes do and are generally safe. The California Plaintiff and the Florida Plaintiff,
3 purchased NJOY E-Cigarettes while in their respective states. Had Defendant
4 disclosed that NJOY E-Cigarettes contain a variety of carcinogens, toxins, impurities,
5 and related potential health hazards which are or should be known to Defendant, and
6 as found by various studies discussed in more detail below, including some also found
7 in tobacco cigarettes, Plaintiffs would not have purchased Defendant's NJOY E-
8 Cigarettes. Thus, as a result of Defendant's material deceptive claims and omissions,
9 Plaintiffs suffered injury in fact and lost money.

10 17. Plaintiff Halberstam first purchased NJOY E-Cigarettes in September
11 2013, at Walgreens located at 8770 W. Pico Blvd., Los Angeles, California, 90035.
12 He purchased NJOY Kings Menthol disposable E-Cigarettes. He thereafter
13 intermittently purchased additional NJOY Kings. In total, Plaintiff Halberstam
14 purchased approximately five NJOY E-Cigarettes between September and December
15 2013, for which he paid the retail market price for each, which he believes was \$7.99.
16 On information and belief, during the Class Period the price was first \$7.99, and at
17 times was \$8.99, for a single disposable NJOY Kings E-Cigarette.

18 18. Plaintiff Thomas first purchased NJOY E-Cigarettes in the summer of
19 2012, at a Kangaroo Express store located at 3051 Monument Road, Jacksonville,
20 Florida, 32225. Plaintiff Thomas purchased approximately one NJOY OneJoy for
21 which she paid the retail market price, which she believes was \$10.99. On
22 information and belief, the price, at times during the Class Period, was \$10.99 for a
23 single OneJoy E-Cigarette.

24 ***Defendant***

25 19. Sottera, Inc. is or was a corporation incorporated in the state of Nevada,
26 and had its corporate headquarters at 15211 North Kierland Boulevard, Suite 200,
27
28

1 Scottsdale, Arizona 85254. Upon information and belief, it was the parent of NJOY,
2 Inc., and in July 2012, merged into NJOY, Inc.

3 20. NJOY, Inc. is incorporated in Delaware, and has its corporate
4 headquarters at 15211 North Kierland Boulevard, Suite 200, Scottsdale,
5 Arizona 85254. NJOY also has an address at 5455 N Greenway Hayden # 15,
6 Scottsdale, Arizona 85260. Upon information and belief, NJOY merged with its
7 parent, Defendant Sottera, in July 2012.

8 21. Plaintiffs allege, on information and belief, that at all relevant times,
9 Defendant's agents, employees, representatives, executives, directors, partners,
10 and/or subsidiaries were acting within the course and scope of such agency,
11 employment, and representation, on behalf of Defendant.

12 **FACTUAL ALLEGATIONS**

13 **I. ELECTRONIC CIGARETTES**

14 22. This action concerns NJOY E-Cigarettes sold by Defendant, including
15 but not limited to those marketed under the names NJOY, NJOY Kings, OneJoy, and
16 NPRO.

17 23. An electronic cigarette, or e-cigarette, is a device that simulates tobacco
18 smoking. E-cigarettes are designed to deliver a smoking-like "hit" of vapor, usually
19 containing nicotine, which is inhaled by the user. They work through the use of a
20 battery operated heating mechanism, which typically converts a cartridge containing
21 glycerin, propylene glycol, natural and artificial flavors and, in most electronic
22 cigarettes, various proportions of nicotine, into vapor. When a person inhales
23 ("vapes") from an e-cigarette, this mimics the taking of a "drag" on a traditional
24 tobacco cigarette. A heating device is activated, the solution is converted into vapor,
25 and the consumer breathes it in. Some electronic cigarettes, including electronic
26 cigarettes manufactured by Defendant, are designed to look like tobacco cigarettes.
27 The cylinder containing the components is the size and shape of a traditional cigarette;
28

1 it is encased in a material resembling white paper printed to look like a traditional
2 cigarette wrapper, and glows red at the tip when the user inhales.

3 24. According to a recent report by the Centers for Disease Control and
4 Prevention (“CDC”), as of that 2013, more than 36% of smokers in the United States
5 had tried electronic cigarettes, and 8.5% of all adults had tried them.⁴

6 25. According to a subsequent study by the CDC, nearly 1.8 million middle
7 and high school students tried e-cigarettes in 2011 and 2012, including approximately
8 160,000 students who had never used conventional cigarettes.⁵ The study also found
9 that the number of U.S. middle and high school student e-smokers doubled between
10 2011 and 2012.⁶

11 26. According to analysts, sales of e-cigarettes in America in 2012 were
12 between \$300 million and \$500 million.⁷ This was approximately double what they
13 were in the preceding year,⁸ and sales more than doubled to \$1.5 billion in 2013.⁹

17 ⁴ Centers for Disease Control and Prevention, *Key Findings: Trends in*
18 *Awareness and Use of Electronic Cigarettes among U.S. Adults, 2010-2013*,
19 http://www.cdc.gov/tobacco/basic_information/e-cigarettes/adult-trends/index.htm
(last visited Nov. 6, 2014).

20 ⁵ Morbidity and Mortality Weekly Report, Centers for Disease Control and
21 Prevention, *Notes from the Field: Electronic Cigarette Use Among Middle and High*
22 *School Students — United States, 2011–2012* (Sept. 6, 2013),
23 <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm> (last visited Jan. 7,
2014).

24 ⁶ *Id.*

25 ⁷ *See E-cigarettes: Vape ‘Em if You Got ‘Em*, The Economist, Mar. 23, 2013.

26 ⁸ *Id.*

27 ⁹ Horizon Investments, *E-Cigarettes: Proposed Regulations Could Prove To Be*
28 *A Game Changer*, Seeking Alpha, May 25, 2014.

1 27. During the Class Period, Defendant stated on its website that it makes
2 “America’s #1 E-Cigarette,” and claimed, “Over 3 Million Sold.”¹⁰ As of the end of
3 December 2012, according to its Chief Executive Officer (“CEO”), Craig Weiss,
4 NJOY controlled about 40 percent of the U.S. electronic cigarette market.¹¹

5 28. NJOY E-Cigarettes sell for a range of prices. According to a press
6 release by Defendant dated December 6, 2012, announcing the nationwide availability
7 of NJOY Kings, the product was introduced with a retail price of \$7.99. Subsequent
8 to the filing of this action on January 17, 2014, individual NJOY Kings were being
9 sold on NJOY’s website for \$8.99. As of the filing of this Third Amended Complaint,
10 individual NJOY Kings are no longer offered on NJOY’s website, though packs of
11 five and more are, and individual Kings and/or other NJOY E-Cigarettes can also be
12 purchased at stores including various stores in California and Florida, such as
13 Walgreens in Los Angeles, California, 7-Eleven in Costa Mesa, California, 7-Eleven
14 in Huntington Beach, California, and Kangaroo Express in Jacksonville, Florida. On
15 its website, during the Class Period, Defendant offered additional NJOY products at
16 various rates including a pack of two disposable OneJoy E-Cigarettes for \$21.99.
17 NJOY’s website presently offers a five pack of disposable NJOY Kings for \$29.95
18 and a twenty pack of disposable NJOY Kings for \$104.99. During the Class Period,
19 replacement cartridges for rechargeable NJOYs were also offered on NJOY’s
20 website, with a pack of five cartridge refills being sold for \$21.99. As of the filing of
21 this Complaint, NJOY’s website offers a “Recharge Economy Kit” for \$24.99, and a
22 “Recharge Standard Kit” for \$64.99. During the Class Period, NJOYs have been
23
24

25 ¹⁰ *Id.*

26 ¹¹ Burritt, Chris, *E-Cigarette Maker NJOY Seen as Takeover Target Amid Innovation*,
27 Bloomberg, Dec. 5, 2012, <http://www.bloomberg.com/news/2012-12-05/e-cigarette-maker-njoy-seen-as-takeover-target-amid-innovation.html> (last visited Jan. 7, 2014).
28

1 available not only online and in the above referenced stores, but other large retail
2 establishments, consumer warehouse clubs and local convenience stores, nationwide.

3 29. NJOY's products are more expensive than those of certain of its
4 competitors. For example, White Cloud, a competitor, offers individual disposables
5 for \$5.95, and a five pack of rechargeables for \$9.95. Another competitor, Metro
6 Kings E-Cigs, offers individual disposables for \$5.99. Yet another competitor,
7 Mystic, sells one disposable electronic cigarette for \$5.99, and cartridge refills for 3
8 five packs for \$39.99 and 12 five packs for \$129.99; and a five pack of cartridges for
9 its rechargeable e-cigarettes for \$14.99. Krave offers individual disposable Krave
10 King e-cigarettes for \$6.95 and a five pack of cartridges for its rechargeable e-
11 cigarettes for \$10.95. Bull Smoke offers individual disposable "Buckshot" e-
12 cigarettes for \$5.00 each, and a five pack of cartridges for its rechargeable e-cigarettes
13 for \$12.95.

14 **II. PUBLISHED STUDIES DEMONSTRATE THE DANGERS AND**
15 **EXPOSURE TO HEALTH RISKS OF E-CIGARETTES**

16 30. Because of the rapid growth in the use of electronic cigarettes by
17 consumers in recent years, an increasing number of government agencies and
18 research facilities have begun to conduct studies concerning the potential health
19 impact and risks of these devices. These studies have found, *inter alia*, including
20 with respect to NJOY E-Cigarettes: (a) measurable amounts of carcinogens, toxins
21 and other contaminants in e-cigarettes that are, or potentially are, disease-causing,
22 (b) harmful potential side effects of e-cigarettes, and (c) that more study is needed to
23 determine the full range of health dangers of e-cigarettes.

1 31. In 2009, the United States Food and Drug Administration (“FDA”)
2 conducted a study of two brands of cigarettes, one of which was NJOY.¹² The FDA
3 tested a number of NJOY products, including menthol and regular samples at a
4 variety of nicotine strengths.

5 32. The FDA issued a summary of the results of that study,¹³ making, *inter*
6 *alia*, the statements in the following block quotes (language in brackets added):

- 7 • [the] FDA’s Center for Drug Evaluation, Office of Compliance
8 purchased two samples of electronic cigarettes and components from
9 two leading brands. [These were: NJOY E-Cigarettes with various
10 cartridges and Smoking Everywhere Electronic Cigarettes with various
11 cartridges.¹⁴] These samples included 18 of the various flavored,
12 nicotine, and no-nicotine cartridges offered for use with these products.
13 These cartridges were obtained in order to test some of the ingredients
14 contained in them and inhaled by users of electronic cigarettes.
- 15 • FDA’s Center for Drug Evaluation, Division of Pharmaceutical
16 Analysis (DPA) analyzed the cartridges [including NJOY cartridges]
17 from these electronic cigarettes for nicotine content and for the
18 presence of other tobacco constituents, some of which are known to be
19 harmful to humans, including those that are potentially carcinogenic or
20 mutagenic.

21
22 ¹² See FDA Evaluation of E-cigarettes, DPATR-FY-09-23, available at
23 <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf> (last visited
Jan. 13, 2014).

24 ¹³ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146> (last visited
25 Jan. 7, 2014).

26 ¹⁴ For the applicability to NJOY of this and each of the below bullet points quoted
27 regarding the FDA study, see FDA Evaluation of E-cigarettes, DPATR-FY-09-23,
28 available at <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>
(last visited Jan. 13, 2014).

- 1 • DPA’s analysis of the electronic cigarette samples [including those
2 from NJOY] *showed that the product contained detectable levels of*
3 *known carcinogens and toxic chemicals to which users could*
4 *potentially be exposed.* [Emphasis added.]
- 5 • DPA’s testing also suggested that *quality control processes used to*
6 *manufacture these products are inconsistent or non-existent.*
7 [Emphasis added.]
- 8 • Specifically, DPA’s analysis of the electronic cigarette cartridges from
9 the two leading brands revealed the following:
 - 10 • *Certain tobacco-specific nitrosamines which are human*
11 *carcinogens were detected in half of the samples tested*
12 *[including NJOY samples].*
 - 13 • *Tobacco-specific impurities suspected of being harmful to*
14 *humans—anabasine, myosmine, and β-nicotyrine—were*
15 *detected in a majority of the samples tested [including NJOY*
16 *samples].*
 - 17 • Three different [NJOY] electronic cigarette cartridges with
18 the same label [“Menthol high”] were tested and each
19 cartridge emitted a markedly different amount of nicotine
20 with each puff. The nicotine levels per puff ranged from 26.8
21 to 43.2 mcg nicotine/100 mL puff.

22 *Id.* (Emphasis added.)

23 33. The FDA issued a contemporaneous consumer health brochure titled,
24 “FDA Warns of Health Risks Posed by E-Cigarettes,”¹⁵ in which Margaret A.
25 Hamburg, M.D., commissioner of food and drugs, stated, “The FDA is concerned

26 ¹⁵ Retrieval at [http://www.fda.gov/ForConsumers/ConsumerUpdates/](http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm)
27 [ucm173401.htm](http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm) (last visited Jan. 7, 2014).

1 about the safety of these products and how they are marketed to the public.” The
2 FDA also issued a safety alert¹⁶ repeating the risks and noting that “[t]hese products
3 do not contain any health warnings comparable to FDA-approved nicotine
4 replacement products or conventional cigarettes.”

5 34. Indeed, in the FDA’s 2009 study, all four of the major tobacco-specific
6 nitrosamines, N-nitrosonicotine (NNN), N-nitrosoanabasine (NAB), N-
7 nitrosoanatabine (NAT) and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone
8 (NNK), were found in NJOY cartridges.

9 35. The health risks and unknowns concerning electronic cigarettes are
10 compounded by the reality that e-cigarette users smoke differently than traditional
11 smokers. For example, a study of eight traditional and four electronic cigarettes
12 including certain NJOY products found, *inter alia*, that, for the NJOYs, they
13 “***required a stronger vacuum [inhalation strength] to smoke than conventional***
14 ***[tobacco] brands.***” Trtchounian, A., *Conventional and Electronic cigarettes (e-*
15 *cigarettes) have different smoking characteristics*, Nic. & Tob. Res., Vol. 12, No. 9
16 (Sept. 2010), at 911.¹⁷ (Emphasis added.) The study states, “the effects of this on
17 human health could be adverse.” *Id.* at 905. According to researchers, as a general
18 matter, stronger puffing has the potential for “leading to cancer in the deeper lung
19 regions.” *Lung Deposition Analyses of Inhaled Toxic Aerosols in Conventional and*
20 *Less Harmful Cigarette Smoke: A Review*, International Journal of Environmental
21 Research and Public Health, September 23, 2013.¹⁸

24 ¹⁶ Retrieval at [http://www.fda.gov/NewsEvents/Newsroom/](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm)
25 [PressAnnouncements/ucm173222.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm) (last visited Jan. 7, 2014).

26 ¹⁷ Retrieval at [http://edge.rit.edu/content/P12056/public/e%20cig%20vs%](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf)
27 [20conventional%20cig.pdf](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf) (last visited Jan. 14, 2014).

28 ¹⁸ Retrieval at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799535/> (last
visited Jan. 14, 2014).

1 36. Since the FDA released the results of its 2009 study of NJOY and
2 Smoking Everywhere Electronic Cigarettes and its concomitant warning concerning
3 e-cigarettes generally, new studies have been emerging discussing the risks and
4 dangers of e-cigarettes. These studies have concerned a variety of brands and
5 products, but, because e-cigarettes generally operate in a similar manner, and contain
6 similar primary ingredients, even those studies which are not identified below as
7 directly having reviewed NJOY products are relevant hereto.

8 37. E-cigarettes are a subject of concern to major international entities.
9 According to a presentation given by the World Health Organization (“WHO”) to the
10 European Parliament at a Workshop on Electronic Cigarettes on May 7, 2013,
11 “electronic cigarettes are a controversial issue for which additional studies and
12 evidence are needed.” That presentation referenced recent findings from Turkey that:

13 *indicate that propylene glycol and tobacco specific N-nitrosamines, a*
14 *powerful carcinogen, were found in the majority of samples.* Toxins from
15 the e-cigarette averaged around 20% of those of a regular cigarette. It was
16 also found that similarly labeled ENDS [Electronic Nicotine Delivery
17 Systems] cartridges emit different amounts of nicotine, and a nicotine
18 overdose may occur which can have serious side effects. *There are*
19 *currently no studies available on safety and efficacy of long-term e-*
20 *cigarettes use.* (Emphasis added.)

21 38. As recently as July 2013, the WHO stated that “[m]ost ENDS [Electronic
22 Nicotine Delivery Systems] contain large concentrations of propylene glycol, which
23 is a known irritant when inhaled,” that “[t]he testing of some of these products also
24 suggests the presence of other toxic chemicals, aside from nicotine,” and that the
25 safety of these devices “has not been scientifically demonstrated.”¹⁹

26
27 ¹⁹ Retrieval at [http://www.who.int/tobacco/communications/statements/](http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/)
28 [electronic_cigarettes/en/](http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/) (last visited Jan. 7, 2014).

1 39. Numerous other studies have been performed by universities and other
2 research centers, and have reported similar concerns about the potential for health
3 risks associated with electronic cigarettes.

4 40. For example, a 2013 report titled *Electronic Cigarettes – an Overview*,
5 by the German Cancer Research Center,²⁰ which was based on a comprehensive
6 review of literature in the field, found in summary as to “Product characteristics” (the
7 following bullet pointed paragraphs are block quoted text):

- 8 • E-cigarettes cannot be rated as safe at the present time.
- 9 • Consumers do not have reliable information on product quality.
- 10 • Electronic cigarettes have various technical flaws (leaking
11 cartridges, accidental intake of nicotine when replacing cartridges,
12 possibility of unintended overdose.)
- 13 • Some manufacturers provide insufficient and partly wrong
14 information about their liquids.

15 As to “Health Effects,” the summary stated (the following bullet pointed paragraphs
16 are block quoted text):

- 17 • The liquids contain ingredients that on short-term use irritate air-
18 ways and may lead to allergic reactions and which may be harmful to
19 health when inhaled repeatedly over a prolonged period of time.
- 20 • The aerosol of some liquids contains harmful substances
21 (formaldehyde, acetaldehyde, acrolein, diethylene glycol, nickel,
22 chromium, lead).
- 23 • The functionality of electronic cigarettes can vary considerably
24 (aerosol production, nicotine delivery into aerosols).

25
26 ²⁰ Published in Red Series, Tobacco Prevention and Tobacco Control, Vol. 19:
27 Electronic Cigarettes – An Overview (Heidelberg 2013), available at
28 <http://www.dkfz.de/en/presse/download/RS-Vol.19-E-Cigarettes-EN/pdf>.

- Adverse health effects for third parties exposed cannot be excluded because the use of electronic cigarettes leads to emission of fine and ultrafine inhalable liquid particles, nicotine and cancer-causing substances into indoor air.

Id. at viii.

41. Among the more specific risks identified in the studies reviewed in that report by the German Cancer Research Center are that, *inter alia* (the following bullet pointed paragraphs are block quoted text, the language in brackets has been added, and all internal citations are omitted):

- Electronic cigarettes do not extinguish naturally after about ten puffs like conventional cigarettes, but can be used for hundreds of puffs without a break. When using them as intended, consumers may therefore get a dangerous amount of nicotine by taking too many puffs, which may even result in serious symptoms of nicotine poisoning. *Id.* at 4-5.
- Not even nicotine-free liquids are necessarily harmless. Their main ingredients (propylene glycol [which is an ingredient in NJOY], glycerine [another ingredient in NJOY], flavours) have been approved for use in food, but this does not necessarily mean that they are also safe when they are repeatedly inhaled over a prolonged period of time – as they are when used in electronic cigarettes. There are currently no studies available on the effects of long-term use of e-cigarettes. *Id.* at 7.
- To date, only [a] few studies have been conducted on potential health risks associated with inhaling propylene glycol [an ingredient in NJOY] – as one does when using electronic cigarettes as intended. According to these studies, inhaling propylene glycol may affect

1 airways. Short-term exposure to propylene glycol in indoor air (309
2 mg/m³ for one minute) already causes irritations in the eyes, throat
3 and airways. Long-term exposure to propylene glycol in indoor air
4 may raise children's risk of developing asthma. People who have
5 frequently been exposed to theatrical fogs containing propylene
6 glycol are more likely to suffer from respiratory, throat and nose
7 irritations than do unexposed people. We may therefore assume that
8 the use of e-cigarettes, which involves inhaling propylene glycol
9 vapours several times daily, may cause respiratory irritations. This
10 applies, in particular, to individuals with impaired airways and to
11 smokers who switch to e-cigarettes or use them additionally, because
12 smokers usually already have impaired airways. *Id.*

- 13 • Glycerine [an ingredient in NJOY] is considered generally safe for
14 oral intake and is used in food production as a humectant and as a
15 solution carrier in flavours. However, this does not necessarily mean
16 that it is also safe for inhalation – as in e-cigarettes if used as intended.
17 These concerns are not unfounded. The specialist journal *Chest*
18 reports about a case study of a patient with lipoid pneumonia caused
19 by glycerine-based oils from the aerosol of electronic cigarettes. The
20 link appears to be clear, since symptoms disappeared when the patient
21 stopped using electronic cigarettes. *Id.* at 7-8.
- 22 • Individual liquids [including NJOY, per the FDA study noted above
23 and cited in the instant article] were found to contain small amounts
24 of nitrosamines. In addition, formaldehyde, acetaldehyde and
25 acrolein were measured in the aerosol of various e-cigarettes,
26 although considerably less than in cigarette smoke. Formaldehyde
27 and acrolein were only found in glycerine-containing liquids [NJOY
28

contains glycerine]; they probably form upon heating of glycerine. Acrolein is absorbed by the user: A decomposition product of acrolein was detected in the urine of e-cigarettes users, although considerably less than after smoking conventional cigarettes. In addition, nickel and chromium were detected in the aerosol, with higher levels of nickel measured than it is known to be present in cigarette smoke. The aforementioned substances have been classified by the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG) and the International Agency for Research on Cancer (IARC) as carcinogenic. Since there is no safe threshold value for these substances, it cannot be excluded that using electronic cigarettes increases cancer risk, even though these substances may be present in very small amounts. *Id.*

- Data on the impact of e-cigarette use on pulmonary function are not conclusive. A study involving 30 participants reports adverse effects on pulmonary function after using an electronic cigarette for five minutes; however, the long-term pulmonary effects of e-cigarette use are unknown at the present time. *Id.*
- There are currently no studies available on the effects of long-term use of e-cigarettes. *Id.* at 7.

42. Certain of the many studies considered in the above-referenced Red Series review are among those discussed in more detail in the individual study references below. One such study was *Short-term Pulmonary Effects of Using an Electronic Cigarette*, published in June 2012 in *Chest*, the journal of the American College of Chest Physicians. That study expressly found both that electronic cigarettes had adverse health effects and the need for further research:

1 *E-cigarettes assessed in the context of this study were found to have*
2 *immediate adverse physiologic effects after short-term use that are*
3 *similar to some of the effects seen with tobacco smoking*; however, the
4 long-term health effects of e-cigarette use are unknown but potentially
5 adverse and worthy of further investigation. (Emphasis added.)

6 43. A French article published in the consumer publication *60 millions de*
7 *consommateurs* on August 26, 2013, reported that e-cigarettes are potentially
8 carcinogenic. It based its findings upon testing 10 different models of e-cigarettes.²¹
9 It found “carcinogenic molecules in a significant amount” in the vapour produced in
10 the products. It further determined that “[i]n three cases out of 10, for products with
11 or without nicotine, the content of formaldehyde was as much as the levels found in
12 some conventional cigarettes.” It found acrolein, a toxic molecule emitted in
13 quantities “that exceeded the amount found in the smoke of some cigarettes.”
14 “Potentially toxic” trace metals were also discovered in some of the models.

15 44. A study by scientists at the University of California Riverside, published
16 on March 20, 2013 in the journal PLoS One, found that:

17 one [unidentified] brand of e-cigarettes generates aerosols containing
18 micron particles comprised of tin, silver, iron, nickel, aluminum and
19 silicate, as well as nanoparticles containing tin, chromium and nickel,
20 which are elements that cause respiratory distress and disease. Those
21 metals come from the wires inside the cartridge, while silicate particles
22 may originate from the fiber glass [*sic*] wicks.

23
24
25
26 ²¹ Quotes in this paragraph are derived from B. McPartland, “Report: e-cigarettes
27 are ‘potentially carcinogenic’” an article published in *The Local*, a source for
28 “France’s News in English,” on August 26, 2013, describing this study.

Williams, M., *et al.*, *Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol*, PLoS ONE 8(3): e57987 (2013).

45. Also, according to that study by the University of California at Riverside:

A total of 22 elements were identified in EC [electronic cigarette] aerosol, and three of these elements (lead, nickel, and chromium) appear on the FDA's "harmful and potentially harmful chemicals" list. Lead and chromium concentrations in EC aerosols were within the range of conventional cigarettes, while nickel was about 2–100 times higher in concentration in EC aerosol than in Marlboro brand cigarettes (Table 1). Adverse health effects in the respiratory and nervous systems can be produced by many of the elements in Table 1, and many of the respiratory and ocular symptoms caused by these elements have been reported by EC users in the Health and Safety Forum on the Electronic Cigarette Forum website (<http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/>). Although [a table reflecting this research] was constructed to emphasize the effects of the elements found in aerosol on the respiratory system, other systems, such as the cardiovascular and reproductive systems, can be affected by most of the elements in EC aerosol. ***EC consumers should be aware of the metal and silicate particles in EC aerosol and the potential health risks associated with their inhalation.***

Id. at 5 (emphasis added).

46. A study published on September 23, 2013 in the International Journal of Environmental Research and Public Health titled, *Lung Deposition Analyses of Inhaled Toxic Aerosols in Conventional and Less Harmful Cigarette Smoke: A Review*, found that there were potential risks associated with e-cigarettes that were

1 not a factor in traditional cigarettes, including “compensatory smoking (*i.e.*, stronger
2 puffing) leading to cancer in the deeper lung regions,” and that “[u]nknown reactions
3 between some components in newly designed filters (or other new additives) may
4 lead to the production of carcinogens or other toxicants.”

5 47. Most NJOY E-Cigarettes contain nicotine. On December 15, 2013, the
6 American Society for Cell Biology issued a press release concerning the findings of
7 researchers at Brown University, who determined that, “Nicotine, the major addictive
8 substance in cigarette smoke, contributes to smokers’ higher risk of developing
9 atherosclerosis, the primary cause of heart attacks,” and that, as such, e-cigarettes,
10 which contain nicotine, as most NJOY E-Cigarettes do, “may not significantly reduce
11 risk for heart disease.”²²

12 **III. NJOY’S PRE-CLASS PERIOD MARKETING CONVEYED SIMILAR**
13 **MESSAGES AS ITS DECEPTIVE AND FALSE CORE MARKETING**
14 **MESSAGES DURING THE CLASS PERIOD**

15 48. Prior to the Class Period, beginning in 2007, as shown below, NJOY
16 packaging bore the slogan “ALL THE PLEASURES OF SMOKING WITHOUT
17 ALL THE PROBLEMS”²³:
18
19
20
21

22 ²² American Society for Cell Biology, “Nicotine drives cell invasion that
23 contributes to plaque formation in coronary arteries, Research indicates e-cigarettes
24 may not significantly reduce risk for heart disease,” Dec. 15, 2013, available at
25 http://www.eurekalert.org/pub_releases/2013-12/asfc-ndc112613.php (last accessed
Jan. 7, 2014).

26 ²³ http://tobaccoproducts.org/index.php/NJoy_Electronic_Cigarette (last visited Dec.
27 14, 2013) (showing picture of packaging with tagline, dated 2007, and stating that
28 each product was introduced in 2007).



49. While packages like the above example appeared only before the Class Period, NJOY continued during the Class Period to market its E-Cigarettes using that core marketing message that NJOY E-Cigarettes are known to be safe or safer than traditional cigarettes.

50. In NJOY's early years, the "All the Pleasures of Smoking Without All the Problems" slogan appeared on a variety of NJOY packages and more than one product line. The package below, for example, is for NJOY's NPRO line, and the slogan reads: "All the pleasures of smoking without all the problems."²⁴

²⁴http://www.electroniccigarettereview.com/images/njoy_review_npro_starter_kit.jpg (last visited Nov. 4, 2014).



51. NJOY also used the message to market its E-Cigarettes at the point of sale. For example, as seen in the below example from approximately 2007, rack posters in stores included the slogan, “All the Pleasures of Smoking Without All the Problems,” and the representation that the products had “No Carcinogens, No Tar.”²⁵

²⁵<http://www.countertobacco.org/sites/default/files/NJOY2007.jpg> (last visited Nov. 4, 2014).



52. The message, as indicated above, was not only on NJOY's packaging and point of sale marketing, but was conveyed through a broad range of marketing materials.

53. On January 30, 2009, for example, Defendant issued a press release stating that, "a smoking alternative that gives smokers all the pleasures they seek, without all the health, social and financial problems – is now available in retail outlets across the United States." NJOY further stated in this press release that NJOY was a preferable alternative to smoking because it, "contains none of the tar, additives or carcinogens found in tobacco-based products." It quoted the president of NJOY's distributor as saying, "If you can imagine a product that looks, feels and tastes like a cigarette or cigar, and gives smokers all the enjoyment of traditional smoking ... without all of the health, social and economic problems, then you can imagine NJOY."

54. NJOY sent this press release to a wide variety of publications, including the Wall Street Journal, Forbes.com, Market Watch, the Daily Herald, and About.com, all of which have large readerships.

1 55. Another NJOY press release, issued on March 13, 2009, and
2 disseminated, at least, over MarketWire on that date, stated, “[t]he NPRO from NJOY
3 is a revolutionary new smoking alternative product that ... gives smokers all the
4 pleasure and satisfaction of tobacco smoking without all the health, social ... and ...
5 without the growing economic concerns.” NJOY further stated, “NPRO contains no
6 tobacco, and none of the tar, additives, chemicals or carcinogens found in tobacco
7 cigarettes,” and “NJOY ... offers ... all the pleasures and satisfaction of traditional
8 smoking, without all the issues traditionally associated with tobacco cigarettes.”

9 56. NJOY also created, or caused to be created, a user guide,²⁶ the front cover
10 of which read “ALL THE PLEASURES OF SMOKING WITHOUT ALL THE
11 PROBLEMS.” The guide listed, among the benefits of NJOY, that it purportedly
12 contains “[n]o carcinogens, no tar,” and “[n]o first or second hand smoke.” It
13 described nicotine in the following manner:

14 Nicotine is an alkaloid found in certain plants, predominantly tobacco,
15 and in lower quantities, tomato, potato, eggplant, and green pepper.
16 When it is absorbed in small amounts, whether from tobacco cigarettes,
17 cigars, or NJOY, it can cause stimulation, a feeling of relaxation,
18 calmness and alertness ... Nicotine, while dependence-forming, is not
19 a known cause of cancer.

20 This guide further stated that “[t]he number of ingredients in Njoy and the
21 outcome of those ingredients when used are vastly different and better than
22 those found in traditional tobacco cigarettes and cigars,” and added that “[t]he
23 Food and Drug Administration deems propylene glycol safe.”
24
25
26

27 ²⁶ http://hinareed.com/images/NJOY-2380_Small_Brochure_v2.pdf (last visited
28 Nov. 4, 2014).

1 57. In short, Defendant's pre-Class Period advertisements and marketing
2 materials were permeated with health implications that Defendant continued to utilize
3 during the Class Period, as described more fully below.

4 **IV. DEFENDANT'S UNIFORM AND PERVASIVE**
5 **ADVERTISING CAMPAIGN DURING THE CLASS**
6 **PERIOD WAS MATERIALLY DECEPTIVE, FALSE**
7 **AND MISLEADING**

8 58. During the Class Period, Defendant has carried out a consistent and
9 widespread campaign of deceptively promoting its NJOY E-Cigarettes. It has done
10 this through numerous slogans with health implications, including: that NJOY E-
11 Cigarettes provide "everything you like about smoking without the things you don't,"
12 and variations of that statement; that NJOY is the "Resolution Solution;" that "Friends
13 Don't Let Friends Smoke" (but they do encourage them to use NJOY); and that,
14 "Cigarettes, You've Met Your Match;" and through omissions and misleading partial
15 disclosures on its packaging. The core marketing message that Defendant has used
16 and a reasonable consumer would understand, that NJOY E-Cigarettes are known to
17 be safe or safer than smoking traditional cigarettes, is false and misleading given the
18 studies discussed in ¶¶ 30-47 above, that have found carcinogens, toxins, and other
19 potentially harmful impurities, including certain of those found in traditional tobacco
20 cigarettes, in electronic cigarettes, including NJOY E-Cigarettes. It is also false and
21 misleading given the content of the NJOY products because, as stated in the studies
22 cited above in Section II, there is still insufficient research for NJOY to assert or
23 convey that NJOY products do not pose health dangers, including long term health
24 dangers, as smoking traditional cigarettes does. Defendant's statements and
25 omissions have occurred in at least seven forms, all of which constitute "advertising."
26 These include: its packaging; inserts to its packaging and shipping materials; its press
27 releases; its print advertisements; its television ads; its radio ads; and its website
28

1 through which it directly sells its NJOY E-Cigarettes and related products to the
2 public.

3 **A. Materially Misleading Omissions on NJOY Packages**

4 59. The packaging for NJOY products, through warnings that are fraught
5 with material omissions, conveys the impression that the product contains no
6 meaningful health risks other than possibly those that are a direct result of
7 nicotine. For example, the during the Class Period, the packaging on NJOY Kings
8 has warned:

9 WARNING: NJOY products are not smoking cessation products and have not
10 been tested as such. The U.S. FDA has not approved NJOY products for any
11 use and they are not intended to diagnose, cure, mitigate, treat, or prevent any
12 disorder, disease, or physical or mental condition. NJOY products contain
13 nicotine, a chemical known to the State of California to cause birth defects or
14 other reproductive harm. Nicotine is addictive and habit forming, and it is very
15 toxic by inhalation, in contact with the skin, or if swallowed. Ingestion of the
16 non-vaporized concentrated ingredients in the cartridges can be poisonous.
17 Physical effects of nicotine may include accelerated heart rate and increased
18 blood pressure. If the cartridge is swallowed, seek medical assistance
19 immediately. NJOY products are intended for use by adults of legal smoking
20 age (18 or older in California), and not by children, women who are pregnant
21 or breastfeeding, or persons with or at risk of heart disease, high blood pressure,
22 diabetes, or taking medicine for depression or asthma. NJOY products may not
23 be sold to minors. Identification of all persons under 26 will be required before
24 purchase. Keep out of reach of children.

60. During the Class Period, Defendant used the following packaging for NJOY Kings, which included the language stated above at ¶ 59:²⁷



61. During the Class Period, packages for OneJoys, contained the same or substantively similar warnings.

62. Defendant utilized very small print on the back of the packaging which made it difficult for many people to read. Moreover, during the Class Period, Defendant failed to list the ingredients of the product on the package. While Defendant did describe what it claims are its ingredients on its website during the Class Period (which description is itself false and misleading as described below, at ¶¶ 89-94), by omitting the ingredients from the labels, Defendant denied consumers at the point of sale the opportunity to decide for themselves whether the chemicals

²⁷ Photographs taken November 21, 2013 of product purchased on that date.

1 used are substances they are willing to risk inhaling. For example, by omitting the
2 ingredients, Defendant hid the fact that NJOY E-Cigarettes contain propylene glycol,
3 a product found to cause throat irritation and induce coughing,²⁸ and thus no longer
4 used by certain of NJOY's competitors in their e-cigarettes. Moreover, as discussed
5 below, omitting the ingredients on the package conceals the dangers associated with
6 the chemicals in its NJOY E-Cigarettes, which are described in the studies referenced
7 above.

8 63. By warning of certain risks relating to nicotine, and the risks that may
9 arise if the concentrated contents of the cartridge are swallowed without being
10 vaporized, this packaging implied that those are the only significant health-related
11 risks related to NJOY E-Cigarettes. This is deceptive and misleading, as the package
12 omitted reference to the other carcinogens, toxins and impurities, including
13 carcinogenic tobacco-specific nitrosamines found in NJOY E-Cigarettes, and the
14 potentially harmful effects of propylene glycol, as discussed above in Section II. It
15 also did not reference the difference in inhalation behavior between vaping and
16 traditional smoking (described herein) that may cause additional problems for
17 persons who use e-cigarettes, including NJOY E-Cigarettes.

18
19
20 ²⁸ *Electronic Cigarettes – An Overview*, published in the Red Series Tobacco
21 Prevention and Tobacco Control, Vol. 19 (Heidelberg 2013), referenced in ¶¶ 40-41
22 above, citing Wieslander G., *Experimental exposure to propylene glycol mist in*
23 *aviation emergency training: acute ocular and respiratory effects*, Occup Environ
24 Med 58: 649-655, Choi H, (2010), *Common household chemicals and the allergy risks*
25 *in pre-school age children*, PLoS One 5: e13423, and Moline JM, *Health effects*
26 *evaluation of theatrical smoke, haze and pyrotechnics* (2000). See also New
27 Hampshire Department of Environmental Services, *Ethylene Glycol and Propylene*
28 *Glycol: Health Information Summary*, Environmental Fact Sheet,
<http://des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-ehp-12.pdf> (last visited Jan. 7, 2014) (stating that “Human volunteers exposed to high levels of propylene glycol mist for a short time had increased levels of eye and throat irritation, and cough.”).

B. Defendant's Other Advertising Was Similarly Materially False and Misleading

64. As demonstrated below, Defendant's pervasive advertisements representing that NJOY E-Cigarettes offer all of the positive aspects of smoking cigarettes without the negative ones, and otherwise implying that NJOY E-Cigarettes are without various health risks, including those present in traditional tobacco cigarettes, are materially deceptive, false and misleading given the studies discussed above in Section II, and fail to disclose that such research and studies have raised significant concerns about the health risks of NJOY E-Cigarettes, including but not limited to:

- the presence of nitrosamines, which are powerful carcinogens, toxins, and other impurities, including certain of those found in tobacco cigarettes, that are dangerous to the user's health and cause disease;
- the harmful impact to lung capacity as a result of the chemicals, including propylene glycol and glycerine, contained therein that are present in NJOY E-Cigarettes;
- that NJOY E-Cigarettes require that the user take significantly stronger puffs than the puffs required for a traditional tobacco cigarette, and that this could be harmful to health;
- and other potentially dangerous but unknown health effects caused by the long term use of e-cigarettes, including NJOY E-Cigarettes.

65. In December 2012, NJOY introduced what would become its new main product, the NJOY Kings. NJOY Kings are sold in regular tobacco and menthol flavors. The packages for NJOY Kings were designed to look like they contain traditional cigarettes, and the NJOY Kings smoking devices mirror traditional cigarettes and, as such, are intended to capitalize on consumers' desire to smoke but

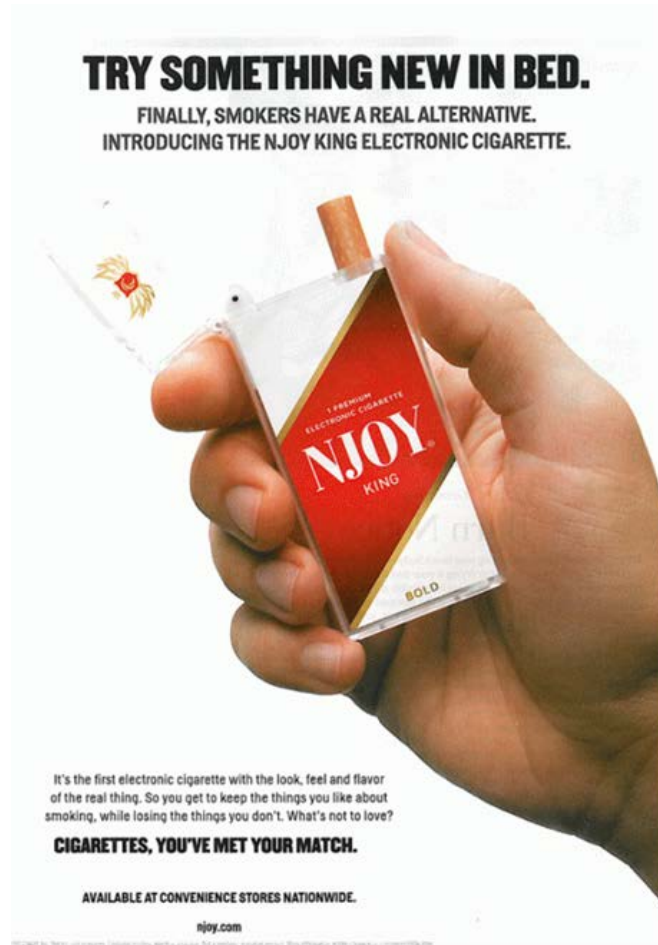
1 yet avoid the health dangers of traditional tobacco cigarettes. For example, as
2 described more fully below, one of NJOY's commonly used slogans includes the
3 statements: "Finally, smokers have a real alternative," and "Cigarettes, you've met
4 your match."

5 66. Defendant launched this product with a widespread marketing campaign
6 that included television, radio, print, and internet advertisements.

7 67. Defendant's print ads spread its core marketing message. For example,
8 as shown in the picture below, in one ad for NJOY Kings, published in at least USA
9 Today in December 2012 and March 2013, and the February 2013 edition of Out
10 Magazine, NJOY states, under the lead line, "The most amazing thing about this
11 cigarette? It isn't one," that with the NJOY King, "You get to keep all the things you
12 like about smoking while losing the things you don't."



68. Another ad shown below, published in at least the June 2013 edition of Out Magazine, under the lead line, “Try something new in bed. Finally smokers have a real alternative,” asserts “It’s the first electronic cigarette where you get to keep the things you like about smoking, while losing the things you don’t. What’s not to love? Cigarettes, you’ve met your match.”



69. There was also a Valentine's Day version of this advertisement, shown below, which read, "This Valentine's Day, smokers have a real alternative," and contained the tagline, "you get to keep the things you like about smoking while losing the things you don't." This version ran in, at least, New York Magazine in February 2013.

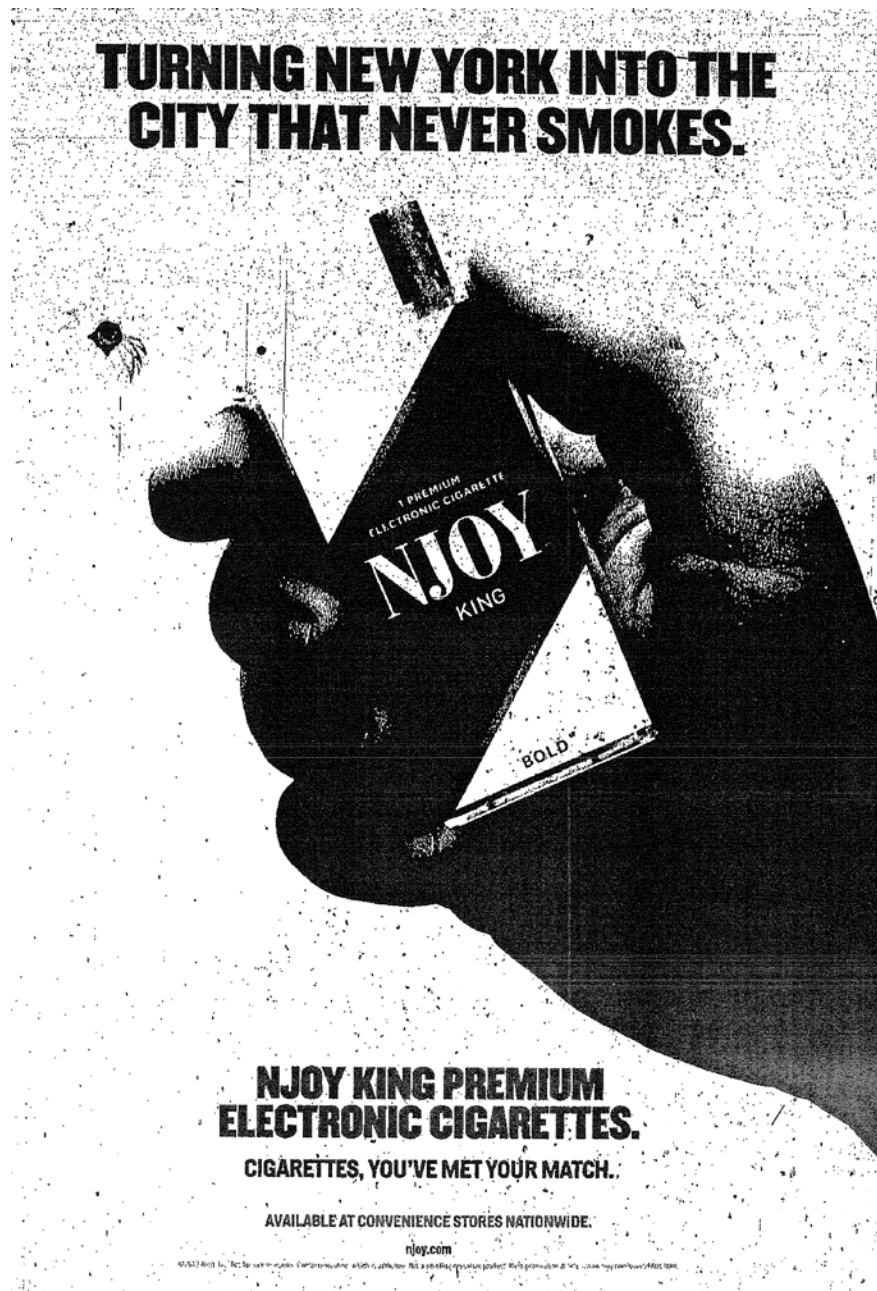


70. Another ad, shown below, published in at least USA Today in April 2013, and Out Magazine in May 2013, contains the same tagline “You get to keep the things you like about cigarettes while losing the things you don’t,” but under the lead line, “Start a new relationship.”



71. The statements in the advertisements in ¶¶ 65-70 above, including that with NJOY E-Cigarettes, “You get to keep all the things you like about smoking while losing the things you don’t,” are deceptive, false and misleading for the reasons stated in ¶ 64, *supra*.

1 72. Another ad, published in at least two editions of New York Magazine in
2 September 2013, touted that NJOY was “Turning New York into the City that Never
3 Smokes,” and stated, “Cigarettes, you’ve met your match.”



25 73. This slogan, too, conveyed Defendant’s core message concerning the
26 purported known health benefits of using NJOY. A reasonable consumer could view
27
28

1 it as representing that it is good to be in a city that “never smokes,” because smoking
2 is unhealthy, and that NJOY is known to be safer than smoking.

3 74. Related NJOY ads centered on the concept of New Year’s resolutions.
4 These, too, conveyed Defendant’s core message about the safety and lack of risk of
5 NJOY E-Cigarettes. Advertisements like the one shown below, published in at least
6 Sports Illustrated magazine in December 2012 and January 2013, and Rolling Stone
7 magazine in January 2013, give the impression that NJOY E-Cigarettes are a smoking
8 cessation device, and also convey the message that NJOY E-Cigarettes are known to
9 be safe or safer than traditional tobacco cigarettes:



1 75. The phrase “Resolution Solution” clearly refers to smokers’ New Year’s
2 resolutions to quit smoking. The reason many people make resolutions to quit
3 smoking is that it is unhealthy. The ad states that NJOY E-Cigarettes are “a real
4 alternative” and thus conveys the impression that they are safer than traditional
5 tobacco cigarettes

6 76. Defendant also ran a radio ad at the end of 2012 and/or beginning of
7 2013 in the same vein, which began, “It’s New Year’s Resolution time. Good thing
8 you’ve got NJOY on your side.”

9 77. These “Resolution Solution ads additionally convey the impression that
10 NJOY E-Cigarettes are, in fact, a smoking cessation aid. Yet, in multiple places,
11 including as referred to in ¶ 59 *supra* (but omitted in this particular advertisement),
12 Defendant states that NJOY E-Cigarettes are not a smoking cessation device. Thus,
13 this advertisement is deceptive, false and misleading. This misrepresentation is
14 particularly significant because the reason that NJOY states elsewhere that it is not a
15 smoking cessation device is to avoid regulation under the Food, Drug and Cosmetic
16 Act (“FDCA”) which has been found, in a lawsuit to which NJOY was a party, to
17 grant the FDA the power to regulate smoking cessation devices. *See Smoking*
18 *Everywhere, Inc. v. United States FDA*, 680 F. Supp. 2d 62 (D.D.C. 2010), *aff’d*,
19 *Sottera, Inc. v. FDA*, 627 F.3d 891 (D.C. Cir. 2010).

20 78. NJOY’s promotion of its NJOY E-Cigarettes as a “real alternative” for
21 smokers in these ads continues to convey the deceptive, false and misleading
22 impression discussed above that its NJOY E-Cigarettes are “without” the things you
23 don’t like about traditional tobacco cigarettes and therefore carry no risk of and do
24 not cause disease as traditional tobacco cigarettes do, which is false in light of the
25 material information discussed in the studies described above in Section II.

79. The statements in the advertisements in ¶¶ 72-78 above, including the slogan that NJOY is the “Resolution Solution,” are deceptive, false and misleading for the reasons stated in ¶ 64, *supra*.

80. Other printed marketing disseminating the same message in 2013 was included in NJOY packaging. One package insert for NJOY E-Cigarettes is as follows:



81. The statements in the insert above, including that “The NJOY King provides everything you like about smoking without the things you don’t,” are deceptive, false and misleading for the reasons stated in ¶ 64, *supra*.

82. Another insert found in NJOY’s packaging in 2013 instructs readers, “Be sure to tell your friends and family about the positive impact that NJOY products are having on your life,” and states that “the NJOY King gives you everything you love about the smoking experience”:

INTRODUCING THE NJOY KING ELECTRONIC CIGARETTE.

From its size, feel and look to its amazing taste, the NJOY King gives you everything you love about the smoking experience. So, go ahead, give it a try.

To begin take one long slow puff on the cigarette - no lighting or charging required. The tip will light up red each time you puff. Each NJOY King lasts up to two puffs.*

You'll know it's time for a new one when the red light blinks on and off.

NJOY recycles ♻️. Send NJOY eight used NJOY King's electronic cigarettes and we'll send you one FREE NJOY King!

For more information, go to njoy.com.

NJOY Kings are available in two flavors, traditional and menthol, with two nicotine levels - Gold (4.5% nicotine by volume) and Gold (3.0% nicotine by volume).

100% SATISFACTION GUARANTEED

NJOY leads the electronic cigarette industry in product quality and customer service excellence. Visit njoy.com for our 30-Day Money-Back Guarantee!

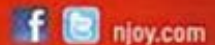
If your NJOY King isn't working properly, or you are not 100% satisfied, **DO NOT RETURN IT TO THE STORE.** For service and help contact: NJOY at CS@NJOY.COM or call 1.888.669.6569.

Return/Exchange items should be sent to the following address:

NJOY Customer Service
5211 N Kierland Blvd, Suite 200
Scottsdale, AZ 85254

Results may vary depending on usage.

BE SURE TO
TELL YOUR FRIENDS
AND FAMILY ABOUT
THE POSITIVE IMPACT
NJOY PRODUCTS ARE
HAVING ON YOUR LIFE.



83. For the reasons noted above in ¶ 64, these representations are deceptive, false and misleading.

84. Each example of NJOY's packaging, inserts and advertising contains an address for NJOY's website, which as described herein, also contains misrepresentations and omissions about NJOY's products.

85. The product description for NJOY King's below, which states, "It provides everything you like about smoking without the things you don't," was taken from Defendant's website:²⁹

Product Description

What Is An NJOY King?

It's a premium electronic cigarette with the look, feel and flavor of the real thing, but without the tobacco smoke. Instead it emits a flavorful but odorless vapor. It provides everything you like about smoking without the things you don't. No tobacco smoke or cigarette smell.

²⁹ NJOY, <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (as visited Jan. 10, 2013).

1 86. As described above, the statement, “It provides everything you like about
2 smoking without the things you don’t,” is deceptive, false and misleading for the
3 reasons stated in ¶ 64, *supra*.

4 87. Beginning in approximately late December 2013, Defendant added a
5 new slogan to its marketing (pictured below), that continued to convey its core
6 marketing message concerning the purportedly known safety or comparative safety to
7 traditional tobacco cigarettes of NJOY E-Cigarettes: “Friends Don’t Let Friends
8 Smoke.”³⁰



22
23
24
25
26
27
28

³⁰ According to an AdvertisingAge Article published January 2, 2014, this ad “will appear through the winter and spring on cable networks including Discovery, ESPN and Viacom, as well as on the radio, in digital media and in “out-of-home” ads. <http://adage.com/article/media/njoy-e-cig-tv-spot-insists-friends-friends-smoke/290886/> (last visited June 25, 2014).

1 88. Substantially similar versions of this ad ran on television around New
2 Year's and during the Super Bowl, and could be played on NJOY's website.³¹ Each
3 included voiceovers that said, "For everything friends do for each other, return the
4 favor. Friends don't let friends smoke. Give them the only electronic cigarette worth
5 switching to. The NJOY King. Cigarettes, you've met your match." A reasonable
6 consumer viewing these advertisements would believe them to mean that "friends
7 don't let friends smoke" because traditional tobacco cigarettes contain carcinogens
8 and toxins and smoking carries the risk of disease, but that friends should encourage
9 friends to use NJOY because NJOY E-Cigarettes do not contain carcinogens or
10 toxins as tobacco cigarettes do and do not therefore carry the same or similar risk of
11 disease. According to a January 2, 2014 article published in Advertising Age,
12 "[a]sked whether the ad winks at the audience about health claims, a spokeswoman
13 for NJOY said yes."³² This is another deceptive, false and misleading advertisement
14 for the reasons stated in ¶ 64, *supra*.

15 89. During the Class Period, Defendant's website had a Frequently Asked
16 Questions page.³³ In one of the sections, Defendant stated that "[t]he primary
17 ingredients [of NJOY E-Cigarettes] are glycerin and propylene glycol, and the
18 secondary ingredients are nicotine and flavors to replicate the taste of traditional
19

20 ³¹ The ads that ran around New Year's included the language "This New Year,"
21 while other versions that ran during the Super Bowl, omitted that phrase. In
22 addition, the version that ran on NJOY's website had the text, "This New Year
23 Return the Favor, Friends Don't Let Friends Smoke," along with a button users
24 could click to make the video play, visible on the screen, while the television ads
25 had that language in only voiceover. Finally, at least some of the ads run during the
26 Super Bowl replaced the few seconds of the video that show the chipmunk above
27 with a blurred naked man streaking across the football field. These minor
28 differences did not change the impact of the core marketing message.

³² *Id.*

³³ NJOY, <http://www.njoy.com/faqs> (as visited Jan. 7, 2014).

1 smoking,” and went on to provide deceptive, false and misleading statements about
2 those ingredients.³⁴ With respect to propylene glycol and glycerin, Defendant’s FAQ
3 page on its website stated:

- 4 • Propylene Glycol - The Food and Drug Administration (FDA) has
5 determined propylene glycol to be “***generally recognized as safe***”
6 for use in food, and propylene glycol is used in cosmetics and
7 medicines. It is used in food coloring and flavoring, as an additive
8 to keep food, medicines and cosmetics moist, and in machines that
9 simulate smoke, although usage in simulating smoking devices is
10 not currently included in the list of uses recognized by the FDA. In
11 NJOY, propylene glycol functions to provide the vapor mist that
12 looks like smoke and to suspend flavor.
- 13 • Glycerin - The FDA has determined glycerin to be “***generally***
14 ***recognized as safe***” for use in food, and glycerin is commonly used
15 in foods, beverages, medical and pharmaceutical applications, such
16 as cough drops, although usage in simulating smoking devices is
17 not currently included in the list of uses recognized by the FDA.

18 (Emphasis added.)

19 90. By stating that the FDA considers these substances “generally
20 recognized as safe” for consumption in food, Defendant created the false and
21 misleading impression that these substances carry are known to be safe as used for
22 inhalation in NJOY E-Cigarettes. However, as discussed in the studies referenced in
23 Section II, *supra*, the gastrointestinal system processes foreign matter differently than
24 the respiratory system, and ingredients that may be safe when digested may not be
25 safe when inhaled, especially with long term use. The statement that “usage in
26 simulating smoking devices is not currently included in the list of uses recognized by

27 ³⁴ *Id.*
28

1 the FDA,” is itself misleading in the absence of reference to the studies finding that
2 these ingredients may not be safe when inhaled, including, but not limited to, the
3 studies referenced in the review of the literature, *Electronic Cigarettes – An Overview*,
4 published in the Red Series Tobacco Prevention and Tobacco Control, Vol. 19
5 (Heidelberg 2013), referenced in ¶¶ 40-41 above. For example, that paper stated:
6 “Glycerine is considered generally safe for oral intake and is used in food production
7 as a humectant and as a solution carrier in flavours. However, this does not
8 necessarily mean that it is also safe for inhalation – as in e-cigarettes if used as
9 intended.” *Id.* at 7 - 8.

10 91. As to the other ingredients it described on the FAQ page of the NJOY
11 website, Defendant stated, with respect to nicotine that:

- 12 • Nicotine - is an alkaloid found in ***certain plants, predominately***
13 ***tobacco, and in lower quantities, tomatoes, potatoes, eggplants,***
14 ***cauliflower, bell-peppers, and some teas.***

15 92. To draw a parallel between nicotine in e-cigarettes and tomatoes,
16 potatoes, eggplants, cauliflower, bell-peppers and teas is deceptive and misleading, as
17 demonstrated by the studies cited *supra* in Section II.

18 93. Finally, Defendant listed the other ingredients of NJOY as unspecified
19 “Natural and Artificial flavors,” as to which it said:

- 20 • Natural and Artificial Flavors - ***determined to be safe for use in***
21 ***food products.***

22 94. This is deceptive and misleading because the website did not disclose
23 what those “flavors” are, nor did it acknowledge that safety for use in food products
24 does not denote safety for use in inhaled products, as described above.

25 95. An additional deception by NJOY is that it stated on its website during
26 the Class Period:

1 Regulatory Compliance: NJOY is the only e-cigarette company to
2 have had its marketing practices reviewed by Federal District and
3 Appellate Courts and found to have not made or implied health
4 claims. The FDA is prohibited from restricting NJOY product
5 imports as a drug or drug delivery device. Other electronic
6 cigarettes may continue to have importation risks.

7 96. This was a misstatement of the District's and Appellate Courts' rulings
8 in the cases at issue. The only Federal District and Appellate Court decisions
9 concerning NJOY's marketing do not hold that NJOY's marketing practices do not
10 make or imply health claims. Rather, these cases hold that NJOY has not marketed
11 its products as "articles intended for use in the diagnosis, cure, mitigation, treatment,
12 or prevention of disease in man or other animals" or "articles ... intended to affect
13 the structure or any function of the body of man or other animals," such that NJOY
14 would be subject to the "drug/device" provisions of the Food, Drug, and Cosmetic
15 Act ("FDCA"). *See Smoking Everywhere, Inc. v. United States FDA*, 680 F. Supp.
16 2d 62 (D.D.C. 2010), *aff'd*, 627 F.3d 891 (D.C. Cir. 2010). Notably, these rulings
17 were issued before NJOY began to market its NJOY E-Cigarettes as the "Resolution
18 Solution," an obvious reference to tobacco smokers' resolutions to quit smoking in
19 the new year. To the extent that the statement implies that the FDA or courts have
20 approved NJOY's past advertising or changes to its advertising after the opinions, it
21 is further misleading.

22 97. NJOY also had still other ways of disseminating its false and misleading
23 core marketing message. For example, on March 25, 2013, it issued a press release
24 announcing that Dr. Richard Carmona, the former U.S. Surgeon General, had joined
25 NJOY's board of directors. NJOY quotes Dr. Carmona as stating, "The current data
26 indicate that electronic cigarettes may have a very meaningful harm reduction
27 potential, and NJOY is committed to the further development of science in this area."
28

1 This conveyed to a reasonable consumer that NJOY E-Cigarettes are known to be
2 safe or safer than traditional tobacco cigarettes, which, given the studies cited in
3 Section II, is materially false and misleading.

4 98. As of the time of the filing of this Complaint, Defendant continues to
5 make material misrepresentations and omissions about its NJOY E-Cigarettes. First,
6 individual NJOY Kings are still widely sold in stores in the packaging shown above
7 at ¶ 60.

8 99. However, it appears that certain new packaging for NJOY lists at least
9 certain of NJOYs ingredients (stating that the product “Contains Glycerin, Propylene
10 Glycol, Nicotine and Flavors”), which is a tacit concession that those ingredients
11 should have been listed all along, and that NJOY was fully capable of doing so.

12 100. Moreover, it appears that certain new NJOY packaging contains a
13 modified warning label, which still does not make the disclosures Plaintiffs allege
14 are omitted. For example, the warning on a five-pack of NJOY Kings purchased in
15 the State of California on November 6, 2014, reads:

16
17 WARNING: NJOY products are not smoking secession products and
18 have not been tested as such. NJOY products are intended for use by
19 adults of legal smoking age (18 or older in California) and not by
20 children, women who are pregnant or breastfeeding, or persons with
21 or at risk of heart disease, high blood pressure, diabetes or taking
22 medicine for depression or asthma. NJOY products contain nicotine,
23 a chemical known to the State of California to cause birth defects or
24 other reproductive harm. Nicotine is addictive and habit forming,
25 and it is very toxic by inhalation, in contact with the skin, or if
26 swallowed. Ingestion of the non-vaporized concentrated ingredients
27 in the cartridges can be poisonous. Keep out of reach of Children,
28

1 Made in China. Flavors made in the USA with domestic and
2 imported ingredients.

3
4 101. The changes that Defendants have made to this warning still contain the
5 nondisclosures Plaintiffs claim were omitted in this action, as discussed herein above.
6 Even with the recent disclosure of ingredients, the label, read as a whole, continues
7 to be false and misleading for the reasons stated above at ¶¶59-61, and 63.

8 102. In addition, as of the time of the filing of this Complaint, NJOY has
9 modified its website in certain respects. However, the health risks and studies at issue
10 in this complaint remain undisclosed on Defendant's website, and instead, it continues
11 to describe its ingredients and products in a deceptive manner. For example, the
12 website says about propylene glycol that it "provides the vapor mist that looks like
13 tobacco smoke and gives the vapor some of its lasting flavor," but does not mention
14 that studies have found that inhalation of the substance is known to cause throat and
15 airway irritation and have adverse effects on short term lung function, and that the
16 long term impact of inhalation of propylene glycol is not known.

17 103. Defendant was well aware that its pervasive advertising campaign would
18 convey to the reasonable consumer that NJOYs were known to be safe or safer than
19 tobacco cigarettes. In an advertising brief of NJOY's ad agency dated June 18, 2012,
20 among a listing of "Brand Promise Dimensions," is that "NJOY combines what
21 smokers have loved for so long (real tobacco pleasure) with the innovations that
22 eliminate everything they are looking to avoid – odor, smoke, *and safer than*
23 *cigarettes (although not communicated)*..." (Emphasis supplied.)

24 104. Likewise, in an email between Roy Anise, an NJOY Executive Vice
25 President with involvement in marketing, Craig Weiss, NJOY's CEO, and other
26 NJOY executives, dated July 26, 2012, Mr. Anise, stated:

1 media pick up should be centered on the idea that NJOY's goal with the
2 King's (*sic*) is to "Obsolete Cigarettes" ... [s]omething like; to accomplish
3 this goal NJOY has designed a revolutionary new e-cigarette that is nearly
4 identical and better (absent health claims) then (*sic*) a cigarette in every
5 way (tell NJOY/King's story). This steps way beyond
6 cessation/health/smoke free, etc. to the much bigger idea of elimination of
7 cigarettes from our society, which is the actual desire of the majority, and
8 makes NJOY the face/brand of that desire. This strategy separates NJOY
9 from Cigarettes, makes NJOY the solution, [and] *will get across the*
10 *'safer' message in the pick up...* (Emphasis supplied.)

11 105. In addition, as set forth in ¶ 88 above, in a January 12, 2014 Advertising
12 Age article, an NJOY spokeswoman admitted that NJOY's "Friends Don't Let
13 Smoke" advertisement "winks" at the audience about health claims.

14 106. NJOY and its agents thus intended for consumers to read a safety
15 message into its ads.

16 **V. EACH NAMED PLAINTIFF SAW AND RELIED ON DEFENDANT'S**
17 **CORE MARKETING MESSAGE, INCLUDING SPECIFIC ADS AND**
18 **PACKAGING**

19 107. Each of the Plaintiffs saw and relied on the core marketing message that
20 Defendant disseminated during the Class Period, including specific ads and
21 packaging.

22 **Plaintiff Halberstam**

23 108. Plaintiff Halberstam saw the NJOY packages before he purchased them
24 in California and read the warning on the packages prior to purchase. The NJOY
25 packages Plaintiff Halberstam purchased did not have an ingredient list on the
26 package. Plaintiff Halberstam, relying on the package, purchased NJOY E-Cigarettes
27 believing that the only material health risks associated with using NJOY E-Cigarettes
28

1 were those that were disclosed on the package, and that they otherwise were safer than
2 traditional cigarettes or safe generally. Plaintiff Halberstam would not have
3 purchased NJOY E-Cigarettes had he known that studies have found NJOYs contain
4 detectable levels of known carcinogens, toxic chemicals and other contaminants and
5 impurities that are, or potentially are, disease-causing, that they may have potentially
6 harmful side effects, and that the full range and long-term health effects of NJOYs
7 are not yet known, as stated in the studies referenced in Section II above.

8 109. Plaintiff Halberstam was also exposed to Defendant's core advertising
9 message that NJOY E-Cigarettes are known to be safe or safer than traditional
10 cigarettes because he saw Defendant's print and television advertisements before he
11 purchased NJOY E-Cigarettes. Halberstam subscribed to Rolling Stone magazine
12 from approximately June of 2012 to the present, and while reading it between
13 December 2012 and January 2013, saw NJOY's slogans "Resolution Solution" and
14 "Cigarettes, You've Met Your Match." In addition, Plaintiff Halberstam read Sports
15 Illustrated and ESPN magazine and between December 2012 and early 2013, saw
16 NJOY's print advertisements featuring the slogans "Resolution Solution" and
17 "Cigarettes, You've Met Your Match." Plaintiff Halberstam also saw NJOY's print
18 advertisement featuring the slogan "Try Something New In Bed."

19 110. Plaintiff Halberstam, relying on Defendant's core marketing message,
20 including through the material omissions on the NJOY package and Defendant's false
21 and misleading advertisements as described above in paragraphs 108 and 109,
22 purchased NJOY E-Cigarettes believing that they were generally safe and did not
23 carry the dangers or risks that traditional tobacco cigarettes do. Plaintiff Halberstam
24 would not have purchased NJOYs had he known that studies have found NJOY E-
25 Cigarettes contain detectable levels of known carcinogens, toxic chemicals and other
26 contaminants and impurities that are, or potentially are, disease-causing, that they may
27 have potentially harmful side effects, and that the full range and long-term health
28

1 effects of NJOYs are not yet known, as stated in the studies referenced in Section II
2 above.

3 **Plaintiff Thomas**

4 111. Plaintiff Thomas saw the NJOY packages before she purchased them in
5 Florida and read the warning on the packages prior to purchase. The NJOY package
6 Plaintiff Thomas purchased did not have an ingredient list on the package. Plaintiff
7 Thomas, relying on the package, purchased NJOY E-Cigarettes believing that the only
8 material health risks associated with using NJOY E-Cigarettes were those that were
9 disclosed on the package, and that they otherwise were safer than traditional cigarettes
10 or generally safe. Plaintiff Thomas would not have purchased NJOY E-Cigarettes
11 had she known that studies have found NJOY E-Cigarettes contain detectable levels
12 of known carcinogens, toxic chemicals and other contaminants that are, or potentially
13 are, disease-causing, that they may have potentially harmful side effects, and that the
14 full range and long-term health effects of NJOY E-Cigarettes are not yet known.

15 **CLASS DEFINITIONS AND ALLEGATIONS**

16 112. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and
17 (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure (“Rule”) for the purpose
18 of asserting the claims alleged in this Complaint on a common basis. Plaintiffs bring
19 this action on behalf of themselves and all members of the following two classes (the
20 “Classes”) comprised of:

21 **a. All persons, exclusive of Defendant and its employees, who**
22 **purchased in or from California one or more NJOY E-**
23 **Cigarettes sold by Defendant during the Class Period (the**
24 **“California Class”).**

25 **b. All persons, exclusive of Defendant and its employees, who**
26 **purchased in or from Florida one or more NJOY E-Cigarettes**
27
28

1 **sold by Defendant during the Class Period (the “Florida**
2 **Class”).**

3 113. Plaintiffs reserve the right to modify or amend the definitions of the
4 Classes after they have had an opportunity to conduct further discovery.

5 114. The Class Period for the California Class is from January 17, 2010 until
6 the date of notice.

7 115. The Class Period for the Florida Class is from July 9, 2010 until the date
8 of notice.

9 116. ***Numerosity. Rule 23(a)(1).*** The members of the Classes are so
10 numerous that their individual joinder is impracticable. Plaintiffs are informed and
11 believe that the proposed Classes contain at least thousands of purchasers of NJOY
12 E-Cigarettes who have been damaged by Defendant’s conduct as alleged herein.

13 117. ***Existence of Common Questions of Law and Fact. Rule 23(a)(2).*** This
14 action involves common questions of law and fact, which include, but are not limited
15 to, the following:

- 16 a. Whether the statements made by Defendant as part of its advertising and
17 marketing for NJOY E-Cigarettes discussed herein are true, or are
18 reasonably likely to deceive, given the omissions of material fact
19 described above;
- 20 b. Whether Defendant’s warnings on the packages of NJOY E-Cigarettes
21 are misleading or are reasonably likely to deceive, given the omissions
22 of material fact described above;
- 23 c. Whether Defendant’s conduct described herein constitutes a deceptive
24 act or practice in violation of the CLRA (California Class);
- 25 d. Whether Defendant’s conduct described herein constitutes an unlawful,
26 unfair, and/or fraudulent business practice in violation of the UCL
27 (California Class);

- e. Whether Defendant's conduct described herein constitutes unfair, deceptive, untrue or misleading advertising in violation of the UCL;
- f. Whether Defendant's conduct described herein constitutes an unconscionable, deceptive, or unfair act or practice in violation of FDUTPA (Florida Class);
- g. Whether Plaintiffs and the other members of the Classes are entitled to damages on the Counts where damages are an available remedy; and
- h. Whether Plaintiffs and the Classes are entitled to restitution, injunctive relief, or other equitable relief and/or other relief as may be proper.

118. **Typicality. Rule 23(a)(3).** All members of the Classes have been subject to and affected by the same conduct and omissions by Defendant. The claims alleged herein are based on the same violations by Defendant that harmed Plaintiffs and members of the Classes. By purchasing NJOY E-Cigarettes during the applicable Class Periods, all members of the Classes were subjected to the same wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not conflict with the interests of any other members of the Classes. Defendant's unlawful, unfair, deceptive, and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced.

119. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes.

120. **Injunctive and Declaratory Relief. Rule 23(b)(2).** Defendant's actions regarding the deceptions and omissions regarding NJOY E-Cigarettes are uniform as to members of the Classes. Defendant has acted or refused to act on grounds that

1 apply generally to the Classes, so that final injunctive relief as requested herein is
2 appropriate respecting the Classes as a whole.

3 121. ***Predominance and Superiority of Class Action. Rule 23(b)(3).***
4 Questions of law or fact common to the Classes predominate over any questions
5 affecting only individual members and a class action is superior to other methods for
6 the fast and efficient adjudication of this controversy, for at least the following
7 reasons:

- 8 a. Absent a class action, members of the Classes as a practical matter will
9 be unable to obtain redress, Defendant's violations of its legal duties will
10 continue without remedy, additional consumers will be harmed, and
11 Defendant will continue to retain its ill-gotten gains;
- 12 b. It would be a substantial hardship for most individual members of the
13 Classes if they were forced to prosecute individual actions;
- 14 c. When the liability of Defendant has been adjudicated, the Court will be
15 able to determine the claims of all members of the Classes;
- 16 d. A class action will permit an orderly and expeditious administration of
17 each Class members' claims and foster economies of time, effort, and
18 expense;
- 19 e. A class action regarding the issues in this case does not create any
20 problems of manageability; and
- 21 f. Defendant has acted on grounds generally applicable to the members of
22 the Classes, making class-wide monetary and equitable relief
23 appropriate.

24 122. Plaintiffs do not contemplate class notice if the Classes are certified
25 under Rule 23(b)(2), which does not require notice, and notice to the putative Classes
26 may be accomplished through publication, signs or placards at the point-of-sale, or
27 other forms of distribution, if necessary, if the Classes are certified under Rule
28

23(b)(3), or if the Court otherwise determines class notice is required. Plaintiffs will, if notice is so required, confer with Defendant and seek to present the Court with a stipulation and proposed order on the details of a class notice program.

COUNT I
Injunctive Relief and Damages for Violations of the Consumers Legal Remedies Act
(Cal. Civil Code §§ 1750 *et seq.*)
(On Behalf of the California Plaintiff and the California Class and Against Defendant)

123. The California Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

124. The relevant period for this Count is January 17, 2011 until the date of notice.

125. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (“CLRA” or the “Act”), which provides that enumerated listed “unfair methods of competition and unfair or deceptive acts or practices (including those listed below in ¶ 133) undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful,” CLRA § 1770, and that “[a]ny consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain” various forms of relief, including injunction and damages. Cal. Civ. Code § 1780. This cause of action seeks both injunctive relief and damages on behalf of the California Class.

126. On January 16, 2014, prior to the filing of the initial complaint in this action, Plaintiff Halberstam sent Defendant a CLRA notice letter providing the notice required by California Civil Code § 1782(a). Plaintiff Halberstam sent the letter via certified mail, return receipt requested, to the location in Los Angeles where Plaintiff

1 Halberstam purchased NJOY E-Cigarettes, as well as to Defendant's principal place
2 of business in Arizona, and to the Secretary of State of Nevada, where Sottera had
3 been incorporated, advising Defendant that it is in violation of the CLRA and must
4 correct, replace or otherwise rectify the goods and/or services alleged to be in
5 violation of § 1770. Defendant was further advised that in the event the relief
6 requested has not been provided within thirty (30) days, Plaintiff Halberstam will
7 amend his Complaint to include a request for monetary damages pursuant to the
8 CLRA. A true and correct copy of Plaintiff Halberstam's letter is attached hereto as
9 Exhibit A.

10 127. Defendant did not correct, replace, or otherwise rectify the goods and/or
11 services alleged in Plaintiff's letter. Therefore, the California Plaintiff seeks monetary
12 damages pursuant to the CLRA.

13 128. The California Plaintiff was deceived by Defendant's unlawful practices
14 as described above, which included carrying out an advertising campaign, directed at
15 California Plaintiff and the California Class, conveying the message that NJOY E-
16 Cigarettes are known to be safer than smoking traditional cigarettes, or known to be
17 generally safe, which was deceptive, false and misleading given the ingredients and
18 characteristics of NJOY products which were or should be known to Defendant, and
19 the studies that have found carcinogens, toxins, and other potentially harmful
20 contaminants and impurities in NJOY E-Cigarettes and electronic cigarettes
21 generally, including certain of those found in traditional tobacco cigarettes, and that
22 NJOY E-Cigarettes require that the user take significantly stronger puffs than the
23 puffs required for a traditional cigarette, and that this could be harmful to health which
24 was not disclosed. Also undisclosed was the lack of research required to assess the
25 potential danger of electronic cigarettes, especially in long term users.

26 129. Defendant's actions, representations and conduct have violated, and
27 continue to violate the CLRA, because they extend to transactions that are intended
28

1 to result, or which have resulted, in the sale of goods to consumers.

2 130. Defendant marketed, sold and distributed NJOY E-Cigarettes in
3 California and throughout the United States during the relevant period for this Court.

4 131. The California Plaintiff and members of the California Class are
5 “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

6 132. Defendant’s NJOY E-Cigarettes were and are “good[s]” within the
7 meaning of Cal. Civ. Code §§ 1761(a) & (b).

8 133. Defendant violated the CLRA by engaging in at least the following
9 practices proscribed by California Civil Code § 1770(a) in transactions with the
10 California Plaintiff and the California Class which were intended to result, and did
11 result, in the sale of NJOY E-Cigarettes:

12 (5) Representing that [NJOY E-Cigarettes have] . . . approval,
13 characteristics . . . uses [or] benefits . . . which [they do] not have . . .

14 ***

15 (7) Representing that [NJOY E-Cigarettes are] of a particular standard,
16 quality or grade . . . if [they are] of another.

17 ***

18 (9) Advertising goods . . . with intent not to sell them as advertised.

19 134. As such, Defendant’s conduct constitutes unfair methods of competition
20 and unfair or fraudulent acts or practices because it does not sell, and because it
21 intends not to sell, the NJOY E-Cigarettes as Defendant advertised and instead
22 misrepresents the particulars by, in its marketing, representing NJOY E-Cigarettes as
23 described above when it knew, or should have known, that the representations and
24 advertisements were deceptive, false and misleading in light of the omissions of
25 material facts as described above.

26 135. The omitted information would have been material to a reasonable
27 consumer in his or her decision as to whether to purchase the NJOY E-Cigarettes
28

1 and/or purchase the NJOY E-Cigarettes at the price at which they were offered.

2 136. Defendant had a duty to disclose this information to the California
3 Plaintiff and the members of the California Class for several reasons. First, Defendant
4 used statements that convey the message that the use of NJOY E-Cigarettes is known
5 to be safer than smoking traditional cigarettes, or known to be generally safe, as
6 detailed above. Disclosure of the omitted information, including information in the
7 studies referred to in Section II, was necessary to avoid the false impression of safety
8 provided by such marketing. Second, Defendant knew or was in a position to know,
9 from its own product knowledge and creation decisions and the studies, of the
10 presence of carcinogens, toxins, and other impurities in its NJOY E-Cigarettes,
11 especially as described in the FDA's 2009 study of NJOY and Smoking Everywhere
12 Products referenced in ¶¶ 30-35, while consumers were not reasonably in a position
13 to be aware of Defendant's internal product information or such studies. Third,
14 Defendant actively omitted to disclose, or actively concealed, these material facts as
15 to the California Plaintiff and the California Class. Finally, while Defendant made
16 certain specific representations about the risks associated with its NJOY E-Cigarettes,
17 limited to only that they contain nicotine and bear risks related thereto, those
18 representations were misleading half-truths because they implied that those are all of
19 the material or significant risks relating to the use of the product, when, in fact, they
20 are not.

21 137. Defendant provided the California Plaintiff and the other California
22 Class members with NJOY E-Cigarettes that did not match the quality portrayed by
23 its marketing.

24 138. As a result, the California Plaintiff and members of the California Class
25 have suffered irreparable harm. The California Plaintiff's and the other California
26 Class members' injuries were proximately caused by Defendant's conduct as alleged
27 herein. Plaintiff Halberstam, individually and on behalf of all other California Class
28

1 members, seeks entry of an order enjoining Defendant from continuing to employ the
2 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
3 section 1780(a)(2), awarding exemplary and punitive damages against Defendant
4 pursuant to California Civil Code sections 1780(a)(1) and (a)(4), and ordering the
5 payment of costs and attorneys' fees, and such other relief as deemed appropriate and
6 proper by the Court under California Civil Code section 1780(a)(2). If Defendant is
7 not restrained from engaging in these practices in the future, the California Plaintiff
8 and the California Class will continue to suffer harm.

9 139. Pursuant to section 1780(d) of the CLRA, attached hereto as Exhibit B
10 is an affidavit showing that this action has been commenced in the proper forum.

11 **COUNT II**

12 **Injunctive and Equitable Relief for Violations of Unfair Competition Law**
13 **(Cal. Business & Professions Code §§ 17200, *et seq.*)**
14 **(On Behalf of the California Plaintiff and the California Class and Against**
15 **Defendant)**

16 140. The California Plaintiff repeats and realleges the allegations contained
17 in the paragraphs above, as if fully set forth herein.

18 141. The relevant period for this Count is January 17, 2010 until the date of
19 notice.

20 142. The Unfair Competition Law, Cal. Business & Professions Code §
21 17200, *et seq.* ("UCL"), prohibits any "unlawful," "unfair," or "fraudulent" business
22 act or practice and any false or misleading advertising.

23 143. In the course of conducting business, Defendant committed unlawful
24 business practices by, *inter alia*, making the representations (which also constitute
25 advertising within the meaning of § 17200) and omissions of material facts, as set
26 forth more fully herein, and violating Cal. Civil Code §§ 1750, *et seq.*, and the common
27 law.

28 144. The California Plaintiff, individually and on behalf of the other
California Class members, reserves the right to allege other violations of law which

1 constitute other unlawful business acts or practices. Such conduct is ongoing and
2 continues to this date.

3 145. Defendant's actions constitute "unfair" business acts or practices
4 because, as alleged above, *inter alia*, Defendant engages in deceptive and false
5 advertising, and misrepresents and omits material facts regarding its NJOY E-
6 Cigarettes, and thereby offends an established public policy, and engages in immoral,
7 unethical, oppressive, and unscrupulous activities that are substantially injurious to
8 consumers. This conduct constitutes violations of the unfair prong of Business &
9 Professions Code §§ 17200, *et seq.*

10 146. Business & Professions Code §§ 17200, *et seq.*, also prohibits any
11 "fraudulent business act or practice."

12 147. Defendant's actions, claims, nondisclosures, and misleading statements,
13 as alleged herein, also constitute "fraudulent" business practices in violation of the
14 UCL because, among other things, they are false, misleading, and/or likely to deceive
15 reasonable consumers within the meaning of Business & Professions Code §§ 17200,
16 *et seq.*

17 148. There were reasonably available alternatives to further Defendant's
18 legitimate business interests, other than the conduct described herein.

19 149. As a result of Defendant's pervasive false marketing, including
20 deceptive and misleading acts and omissions as detailed herein, the California
21 Plaintiff and other members of the California Class have in fact been harmed as
22 described above. If Defendant had disclosed the information discussed above about
23 the NJOY E-Cigarettes and otherwise been truthful about their safety, the California
24 Plaintiff would not have purchased Defendant's products. Defendant was also able
25 to charge more than what its NJOY E-Cigarettes would have been worth had it
26 disclosed the truth about them.

27 150. As a result of Defendant's unlawful, unfair, and fraudulent practices, the
28

1 California Plaintiff and the other California Class members have suffered injury in
2 fact and lost money.

3 151. As a result of its deception, Defendant has been able to reap unjust
4 revenue and profit in violation of the UCL.

5 152. Unless restrained and enjoined, Defendant will continue to engage in the
6 above-described conduct. Accordingly, injunctive relief is appropriate for the
7 California Plaintiff and the California Class.

8 153. As a result of Defendant's conduct in violation of the UCL, the
9 California Plaintiff and members of the California Class have been injured as alleged
10 herein in amounts to be proven at trial because he purchased NJOY E-Cigarettes
11 without full disclosure of the material facts discussed above.

12 154. As a result, the California Plaintiff, individually, and on behalf of the
13 California Class, and the general public, seeks restitution and disgorgement of all
14 money obtained from the California Plaintiff and the members of the California Class
15 collected by Defendant as a result of unlawful, unfair, and/or fraudulent conduct, and
16 seek injunctive relief, and all other relief this Court deems appropriate, consistent with
17 Business & Professions Code § 17203.

18
19 **COUNT III**
20 **Injunctive Relief and Damages for Breach of the Florida Deceptive and Unfair**
21 **Trade Practices Act**
22 **(Fla. Stat. § 501.201, *et seq.*)**
23 **(On Behalf of the Florida Plaintiff and the Florida Class and Against**
24 **Defendant)**

25 155. Plaintiff Thomas repeats and realleges the allegations contained in ¶¶ 1-
26 122 above, as if fully set forth herein.

27 156. The relevant period for this Count is July 9, 2010 until the date of
28 notice.

1 157. This cause of action is brought pursuant to the Florida Deceptive and
2 Unfair Trade Practices Act, Fla. Stat. §501.201 et seq. (“FDUTPA”), whose purpose
3 is to “protect the consuming public . . . from those who engage in unfair methods of
4 competition, or unconscionable, deceptive, or unfair acts or practices in the conduct
5 of any trade or commerce.” Fla. Stat. §501.202(2).

6 158. This cause of action is for damages pursuant to Fla. Stat. § 501.211(2).
7 Pursuant to the Act, “a person who has suffered a loss as a result of a violation of this
8 part may recover actual damages, plus attorney's fees and Court costs.” Fla. Stat
9 §501.211(2).

10 159. Plaintiff Thomas is a consumer as defined by Fla. Stat. §501.203.
11 Plaintiff Thomas and each member of the Florida Class purchased NJOY E-Cigarettes
12 during the Class Period.

13 160. Defendant is engaged in trade or commerce within the meaning of the
14 Act.

15 161. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of
16 competition, unconscionable acts or practices, and unfair or deceptive acts or practices
17 in the conduct of any trade or commerce”

18 162. Defendant has violated the Act by engaging in the unfair and deceptive
19 acts and practices as described herein, which included carrying out an advertising
20 campaign, directed at Plaintiff Thomas and the Florida Class, conveying the message
21 that the use of NJOY E-Cigarettes is known to be safer than smoking traditional
22 cigarettes, or known to be generally safe, which was deceptive, false and misleading
23 given the studies that have found carcinogens, toxins, and other potentially harmful
24 impurities in NJOY E-Cigarettes and electronic cigarettes generally, including certain
25 of those found in traditional tobacco cigarettes, and that NJOY E-Cigarettes require
26 that the user take significantly stronger puffs than the puffs required for a traditional
27 cigarette, and that this could be harmful to health which was not disclosed. Also
28

undisclosed was the lack of additional research which such studies have determined is required to assess the potential danger of electronic cigarettes, especially in long term users, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

163. Plaintiff Thomas and the Florida Class have been aggrieved by Defendant's unfair and deceptive acts and practices in that they purchased NJOY E-Cigarettes. As a result of Defendant's unfair and deceptive acts and practices, and unlawful conduct, Plaintiff Thomas and other members of the Florida Class have in fact been harmed. If Defendant had disclosed the information discussed above about the NJOY E-Cigarettes and otherwise been truthful about their safety, Plaintiff Thomas would not have purchased Defendant's products. In fact, Defendant was able to charge more than what its NJOY E-Cigarettes would have been worth had it disclosed the truth about them.

164. The damages suffered by Plaintiff Thomas and the Florida Class were directly and proximately caused by the unfair and deceptive acts and practices of Defendant, as more fully described herein.

165. Pursuant to Fla. Stat. § 501.211(1), Plaintiff Thomas and the Florida Class seek a declaratory judgment and a court order enjoining the above-described wrongful acts and practices of Defendant.

166. Additionally, pursuant to Fla. Stat. § 501.211(2) and pursuant to Fla. Stat. § 501.2015, Plaintiff Thomas and the Florida Class make claims for damages, attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment:

- a. Certifying the Classes as requested herein, appointing Plaintiff Halberstam as class representative for the California Class, appointing Plaintiff Thomas as class representative for the Florida Class and

- 1 appointing Court-appointed interim co-lead counsel, Wolf Haldenstein
2 Adler Freeman & Herz LLP, Westerman Law Corporation, and Levi &
3 Korsinsky LLP, as counsel for the Classes;
- 4 b. Requiring Defendant to disgorge or return all monies, revenues and
5 profits obtained by means of any wrongful act or practice to Plaintiffs
6 and the members of the Classes under Cal. Bus. & Prof. Code §§ 17200
7 et seq, and each other cause of action where such relief is permitted;
- 8 c. Enjoining Defendant from engaging in the unlawful practices as set forth
9 herein, including marketing or selling NJOY E-Cigarettes without
10 disclosing the potential health risks relating thereto, and directing
11 Defendant to engage in corrective action, or providing other injunctive
12 or equitable relief;
- 13 d. Pursuant to Fla. Stat. §§ 501.211 and 501.2015, awarding damages to
14 each member of the Florida Class;
- 15 e. Awarding damages pursuant to Cal. Civ. Code § 1780, including
16 exemplary and punitive damages to prevent and deter Defendant from
17 future unlawful conduct;
- 18 f. Awarding all equitable remedies available pursuant to Cal. Civ. Code §
19 1780 and other applicable law;
- 20 g. Awarding attorneys' fees and costs;
- 21 h. Awarding pre-judgment and post-judgment interest at the legal rate; and
22 i. Providing such further relief as may be just and proper.

23
24 DATED: June 16, 2015

WESTERMAN LAW CORPORATION

25
26 By: /s/ JEFF S. WESTERMAN
JEFF S. WESTERMAN (94559)
27 jwesterman@jswlegal.com
ANNA FAIRCLOTH (275636)
28 afaircloth@jswlegal.com

1 1900 Avenue of the Stars, 11th Floor
2 Los Angeles, CA 90067
3 Telephone: 310/698-7880
4 Facsimile: 310/775-9777

5 **WOLF HALDENSTEIN ADLER**
6 **FREEMAN & HERZ LLP**
7 JANINE L. POLLACK (*pro hac vice*)
8 pollack@whafh.com
9 DEMET BASAR (*pro hac vice*)
10 basar@whafh.com
11 KATE M. MCGUIRE (*pro hac vice*)
12 mcguire@whafh.com
13 270 Madison Avenue
14 New York, New York 10016
15 Telephone: 212/545-4600
16 Facsimile: 212/545-4653

17 **WOLF HALDENSTEIN ADLER**
18 **FREEMAN & HERZ LLP**
19 FRANCIS M. GREGOREK (144785)
20 gregorek@whafh.com
21 BETSY C. MANIFOLD (182450)
22 manifold@whafh.com
23 RACHELE R. RICKERT (190634)
24 rickert@whafh.com
25 MARISA C. LIVESAY (223247)
26 livesay@whafh.com
27 750 B Street, Suite 2770
28 San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

LEVI & KORSINSKY LLP
EDUARD KORSINSKY (*pro hac vice*)
ek@zlk.com
SHANNON L. HOPKINS (*pro hac vice*)
shopkins@zlk.com
NANCY A. KULESA (*pro hac vice*)
nkulesa@zlk.com
STEPHANIE A. BARTONE (*pro hac vice*)
sbartone@zlk.com
30 Broad Street, 24th Floor
New York, New York 10004
Telephone: 212/363-7500
Facsimile: 866/367-6510

Interim Co-Lead Counsel

THE WILNER FIRM, P.A.
RICHARD J. LANTINBERG (*pro hac vice*)
rlantinberg@wilnerfirm.com

444 E. Duval Street
Jacksonville, FL 32202
Telephone: 904/446-9817
Facsimile: 904/446-9825

BISNAR CHASE LLP

BRIAN D. CHASE (164109)
bchase@bisnarchase.com
JERUSALEM F. BELIGAN (211258)
jbeligan@bisnarchase.com
TRAVIS K. SIEGEL (282482)
tsiegel@bisnarchase.com
1301 Dove Street, Suite 120
Newport Beach, CA
Telephone: 949/752-2999
Facsimile: 949/752-2777

Additional Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: June 16, 2015

WESTERMAN LAW CORP

By: /s/ JEFF S. WESTERMAN
JEFF S. WESTERMAN (94559)
jwesterman@jswlegal.com
ANNA FAIRCLOTH (275636)
afaircloth@jswlegal.com
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: 310/698-7880
Facsimile: 310/775-9777

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
JANINE L. POLLACK (*pro hac vice*)
pollack@whafh.com
DEMET BASAR (*pro hac vice*)
basar@whafh.com
KATE M. MCGUIRE (*pro hac vice*)
mcguire@whafh.com
270 Madison Avenue
New York, New York 10016
Telephone: 212/545-4600
Facsimile: 212/545-4653

1 **WOLF HALDENSTEIN ADLER**
2 **FREEMAN & HERZ LLP**
3 FRANCIS M. GREGOREK (144785)
4 gregorek@whafh.com
5 BETSY C. MANIFOLD (182450)
6 manifold@whafh.com
7 RACHELE R. RICKERT (190634)
8 rickert@whafh.com
9 MARISA C. LIVESAY (223247)
10 livesay@whafh.com
11 750 B Street, Suite 2770
12 San Diego, CA 92101
13 Telephone: 619/239-4599
14 Facsimile: 619/234-4599

9 **LEVI & KORSINSKY LLP**
10 EDUARD KORSINSKY (*pro hac vice*)
11 ek@zlk.com
12 SHANNON L. HOPKINS (*pro hac vice*)
13 shopkins@zlk.com
14 NANCY A. KULESA (*pro hac vice*)
15 nkulesa@zlk.com
16 STEPHANIE A. BARTONE (*pro hac vice*)
17 sbartone@zlk.com
18 30 Broad Street, 24th Floor
19 New York, New York 10004
20 Telephone: 212/363-7500
21 Facsimile: 866/367-6510

16 *Interim Class Counsel*

17 **THE WILNER FIRM, P.A.**
18 RICHARD J. LANTINBERG (*pro hac vice*)
19 rlantinberg@wilnerfirm.com
20 444 E. Duval Street
21 Jacksonville, FL 32202
22 Telephone: 904/446-9817
23 Facsimile: 904/446-9825

21 **BISNAR CHASE LLP**
22 BRIAN D. CHASE (164109)
23 bchase@bisnarchase.com
24 JERUSALEM F. BELIGAN (211258)
25 jbeligan@bisnarchase.com
26 TRAVIS K. SIEGEL (282482)
27 tsiegel@bisnarchase.com
28 1301 Dove Street, Suite 120
Newport Beach, CA
Telephone: 949/752-2999
Facsimile: 949/752-2777

Additional Counsel for Plaintiffs

PROOF OF SERVICE

I, the undersigned, say:

I am a citizen of the United States and am over the age of 18 and not a party to the within action. My business address is 1900 Avenue of the Stars, 11th Floor, Los Angeles, California 90067.

On June 16, 2015, I served the following document:

FOURTH CONSOLIDATED AMENDED COMPLAINT FOR VIOLATIONS OF: (1) CAL. CONSUMERS LEGAL REMEDIES ACT; (2) CAL. UNFAIR COMPETITION LAW; AND (3) FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

By posting the document to the ECF Website of the United States District Court for the Central District of California, for receipt electronically.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 16, 2015, at Los Angeles, California.

/s/ Anna Faircloth
Anna Faircloth